

United States  
9  
Circuit Court of Appeals

For the Ninth Circuit.

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TOYO KISEN KAISHA, a Corporation, as Claimant of the Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture, and UNITED STATES FIDELITY & GUARANTY COMPANY, Her Stipulator,  
Appellants,

vs.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm Name of WILLITS AND PATTERSON,  
Appellees.

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Apostles on Appeal.

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Upon Appeal from the Southern Division of the United States District Court for the Northern District of California,  
First Division.

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FILED

JAN 5 - 1921

F. D. MONCKTON,

CLERK



United States  
Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

Clerk's Office.

No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Praeceptum (for Apostles on Appeal).**

To the Clerk of Said Court:

Sir: Please incorporate in the Apostles on Appeal in the above-entitled cause the following:

This praecipe.

Libel.

Claim.

Bond for release of vessel.

Answer.

All depositions and testimony taken.

Further answer to interrogatories.

Stipulation as to testimony of witnesses.

Answers to interrogatories of claimant.

Stipulation regarding condition of cocoa oil.

Amendment to libel.

Interlocutory decree.

Order referring cause to commissioner.

Report of commissioner on reference.

Claimant's exceptions to report of commissioner on reference.

Order overruling exceptions to report of commissioner on reference.

Order confirming report of commissioner.

Final decree.

Notice of appeal.

Bond for costs on appeal.

Bond staying execution pending decision on appeal.

Notice of filing above bonds, and

Assignment of errors.

SAMUEL KNIGHT and

F. ELDRED BOLAND,

Proctors for Respondent, Claimant and U. S. Fidelity & Guaranty Co.

[Endorsed]: Filed Dec. 9, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1\*]

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\*Page-number appearing at foot of page of original certified Apostles on Appeal.

In the Southern Division of the District Court of  
the United States, for the Northern District of  
California, First Division.

No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

**Statement of Clerk U. S. District Court.**

**PARTIES.**

Libelants: CHARLES D. WILLITS and I. L.  
PATTERSON, Copartners, Doing Business  
Under the Firm Name of WILLITS & PAT-  
TERSON.

Respondent: The Japanese Steamship "KOREA  
MARU," Her Engines, Boilers, Boats, Tackle,  
Apparel and Furniture.

Claimant: TOYO KISEN KAISHA, a Corpora-  
tion. [2]

**PROCTORS.**

For Libelants and Appellees: McCUTCHEN, WIL-  
LARD, MANNON & GREENE (formerly  
McCUTCHEN, OLNEY & WILLARD), San  
Francisco.

For Respondent and Claimant, Appellant: SAMUEL KNIGHT, Esq., and F. ELDRED BOLAND, Esq., San Francisco.

PROCEEDINGS.

1917.

November 9. Filed libel for damage to cargo in the sum of \$13,224.68, with interrogatories attached.

Issued monition for attachment of the steamship "Korea Maru," which monition was, on November 20th, returned and filed, with the following return endorsed thereon: "In obedience to the within monition, I attached the Jap. Strm. 'Korea Maru' therein described, on the ninth day of November, 1917, and have given due notice to all persons claiming the same that this Court will, on the twentieth day of November, 1917 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I posted a notice of seizure on the herein-named

Jap. Strm. 'Korea Maru,' at San Francisco, Calif.

J. B. HOLOHAN,

United States Marshal.

By Thos. F. Mulhall,

Deputy.

San Francisco, Cal., November 9th, 1917." [3]

November 9. Filed claim of Toyo Kisen Kaisha, a corporation, to steamship "Korea Maru."

Filed admiralty stipulation for the release of said steamship, in the sum of \$17,000.00, with the United States Fidelity & Guaranty Co. as surety.

1918.

October 1. Filed answer to libel; answers to interrogatories propounded by libelant; and interrogatories to be propounded to libelant.

December 19. Filed further answer of claimant to interrogatories propounded by libelant.

1919.

February 7. Filed answers to interrogatories propounded by claimant.

12. Filed deposition of George C. Arnold, taken on behalf of libelants.

March 25. Hearing was this day had, before the Honorable Edward E. Cushman, Judge.

26. Further hearing was this day had, and the cause submitted.  
 Filed depositions of T. Ota et al., taken on behalf of claimant.  
 Filed deposition of U. Kondo, taken on behalf of claimant.
- April 25. Filed deposition of Chiyokichi Ito, taken on behalf of claimant.  
 Filed transcript of testimony taken in open court.
- May 21. Filed amendment to libel. [4]  
 1919.
- October 16. Filed written opinion, in which it was ordered that the libelants recover damages, and the cause referred to United States Commissioner to ascertain the amount due.  
 22. Filed interlocutory decree.
- 1920.
- September 3. Filed report of commissioner, with transcript of proceedings had before him.  
 11. Filed exceptions to commissioner's report.  
 18. This cause came on this day for hearing on the exceptions to commissioner's report, before the Honorable Maurice T. Dooling, Judge, and after argument, was ordered submitted.



- October 20. Filed order overruling exceptions to commissioner's report and directing a decree to be entered in favor of libelants for the sum of \$12,055.74.
27. Filed final decree.
- November 29. Filed notice of appeal.  
Filed assignment of errors.  
Filed supersedeas, and cost bonds on appeal. [5]
- 

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY.—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,  
Respondent.

**Libel.**

To the Honorable the Judges of the United States  
District Court for the Northern District of California:

The libel of Willits and Patterson against

the Japanese steamship "Korea Maru" in a cause of damages, civil and maritime, alleges as follows:

I.

That libelants are copartners doing business under the firm name and style of Willits and Patterson, and have their principal place of business in the City of San Francisco, State of California.

II.

That respondent steamship "Korea Maru" is a Japanese steamship of about 11,276 tons gross register and is now afloat in the waters of San Francisco Bay within the jurisdiction of the United States and of this Honorable Court.

III.

That heretofore on or about the 7th day of July, 1917, libelants shipped, in good order and condition, on respondent [6] steamship as a common carrier of merchandise at the port of Manila, P. I., for transportation to and delivery at the port of San Francisco, California, 302 barrels of cocoanut oil weighing 136,677 pounds; that thereafter said steamship sailed upon said voyage and subsequently arrived at said port of San Francisco, but failed to deliver to libelants all of said cocoanut oil, namely, 88,798 pounds thereof, of the value of \$12,067.65.

IV.

That on said 7th day of July, 1917, Carrero Vidal & Co. shipped, in good order and condition, on respondent steamship, as a common carrier of merchandise at the port of Manila, P. I., for transportation to and delivery at the port of San Francisco,

California, 40 barrels of cocoanut oil, weighing 18,129 pounds; that thereafter said steamship sailed upon said voyage and subsequently arrived at said port of San Francisco, but failed to deliver to libelants all of said cocoanut oil, namely, 4,729 pounds thereof, of the value of \$642.67; that said oil was during all of said times owned by libelants.

V.

That heretofore on the 5th day of July, 1917, Carrero Vidal & Co. shipped, in good order and condition, on respondent steamship, as a common carrier of merchandise at the port of Manila, P. I., for transportation to and delivery at the port of San Francisco, California, 200 barrells of cocoanut oil, weighing 90,911 pounds; that thereafter said steamship sailed upon said voyage and subsequently arrived at said port of San Francisco, but failed to deliver to libelants all of said cocoanut oil, namely, 3,882 pounds thereof, of the value of \$514.36; that said oil was during all of said times owned by libelants.

VI.

That freight was prepaid on said shipments as follows: [7]

On said 302 barrels.....	\$1,515
On said 40 barrels.....	165 and
On said 200 barrels.....	
	<hr/>
Or a total of.....	\$

VII.

That said cocoanut oil was an article which required stowage in a cool and ventilated cargo com-

partment of said steamship for its proper and safe carriage; that instead of being so stowed and carried on said voyage, however, libelants are informed and believe and so allege that said cocoanut oil was improperly stowed in tanks in the after part of said steamship immediately adjoining the engine-room, which said tanks and said oil were subjected to heat and were without any proper or efficient ventilation whatsoever; that by reason of said improper stowage and said negligent care of said cargo, said cocoanut oil was caused by said heat to liquefy and to escape from the barrels in which same was contained to the bottom of said tanks in which it was stowed; that upon said oil so escaping from said barrels, and instead of saving the same, the officers, crew and employees of said steamship negligently and carelessly pumped said oil overboard, and totally lost the same.

#### VIII.

That by reason of said improper stowage and said negligence in the care and custody of the cargo, libelants were damaged in the total sum of \$13,-224.68.

#### IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE libelants pray that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against said steamship "Korea Maru," her engines, boilers, boats, tackle,

[8] apparel and furniture, and that all persons having any interest therein may be cited to appear and answer on oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the aforesaid damages, with interest, and that said steamship be condemned and sold to pay the same; and that libelants may have such other and further relief as in law and justice they may be entitled to receive.

IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Libelants.

State of California,  
City and County of San Francisco,—ss.

Charles D. Willits, being first duly sworn, deposes and says:

That he is one of the libelants herein; that he has read the foregoing libel, knows the contents thereof, and believes the same to be true.

CHAS. D. WILLITS.

Subscribed and sworn to before me this 9th day of November, 1917.

[Seal] FRANK L. OWEN,  
Notary Public in and for the City and County of  
San Francisco, State of California. [9]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

**Interrogatories Propounded to Respondent and  
Claimant Under Admiralty Rule No. 23.**

1. In what part of the steamship "Korea Maru" was said cocoanut oil stowed?
2. Where was said stowage place located in respect to the engine-room?
3. What was there, if anything, which separated the engine-room from the space in which said oil was stowed?
4. Were there any ventilators leading to the compartment in which said oil was stowed?
5. What was the breadth, width and height of the compartment?
6. On which deck of the vessel was it located?
7. How was the compartment covered over, or closed?

8. When so covered were there any means of circulating the air through the compartment?
9. If so, what were such means?
10. What became of the cocoanut oil which escaped from said barrels?
11. Where did the bottom of said cargo compartment drain to, [10] and if said cocoanut oil was pumped overboard, by what means was the same done?

IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Libelants.

[Endorsed]: Filed Nov. 9, 1917. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [11]

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In the District Court of the United States of  
America, Northern District of California.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTER-  
SON, etc.,

Libelants,

vs.

The Japanese Steamer "KOREA MARU."

(Claim.)

To the Honorable Judges of the District Court of  
the United States for the Northern District of  
California:

The claim of Toyo Kisen Kaisha to the Japanese  
steamer "Korea Maru," her tackle, apparel and

furniture, now in the custody of the marshal of the United States for the said Northern District of California, at the suit of Charles D. Willits and I. L. Patterson, copartners doing business under the firm name of Willits and Patterson, alleges:

That Toyo Kisen Kaisha, a corporation, is the true and *bona fide* owner of the said Japanese steamship "Korea Maru," her tackle, apparel and furniture, and that no other person is owner thereof.

WHEREFORE, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to Toyo Kisen Kaisha, a corporation, and otherwise right and justice to administer in the premises.

TOYO KISEN KAISHA,  
By L. E. BEMISS,  
Asst. Mgr.

Northern District of California,—ss.

Subscribed and sworn to before me this 9th day of Nov., A. D. 1917.

SAMUEL KNIGHT,  
Proctor for Claimant.

[Seal] C. W. CALBREATH,  
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Nov. 9, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [12]



District Court of the United States for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

STIPULATION

Entered into *in* Pursuant to the Rules and Practice of this Court.

**(Bond for Release of Vessel.)**

WHEREAS, a libel was filed on the 9th day of November, in the year of our Lord one thousand nine hundred and seventeen, by Charles D. Willits et al. against the Japanese S. S. "Korea Maru," etc., for the reasons and causes in the said libel mentioned; and, whereas, the Japanese S. S. "Korea Maru," etc., is in the custody of the United States Marshal, under the process issued in pursuance of the prayer of said libel, and whereas the said Japanese S. S. "Korea Maru," etc., has been claimed by ——; and, whereas, it has been stipulated that said Japanese S. S. "Korea Maru," etc., may be released from arrest upon the giving and filing of an Admiralty Stipulation in the sum of Seventeen Thousand (17,000) Dollars, as appears from said stipulation now on file in said court; and the part— hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or their sureties, execution for the above amount may issue against their goods, chattels and lands.

NOW, THEREFORE, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree, to Samuel Knight and *and* F. G. Boland, Esquires, proctors for the claimant of said Japanese S. S. "Korea Maru," etc., abide by and pay the money awarded by the final decree rendered by the court or the Appellate Court if any [13] appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

TOYO KISEN KAISHA,

L. E. BEMISS,

Asst. Mgr.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY,

[Seal]

By H. V. D. JOHNS, Jr.,

Atty. in Fact.

Taken and acknowledged this 9th day of Nov.,  
1917, before me.

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of  
California.

Northern District of California,—ss.

H. V. D. Johns, Jr., Atty. in fact for United States Fidelity and Guaranty Company, part—to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of

thirty-five thousand dollars, over and above his just debts and liabilities.

H. V. D. JOHNS, Jr.

Sworn to this 9th day of Nov., 1917, before me.

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of California.

Filed the 9th day of Nov., 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

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In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

**Answer.**

To the Honorable the Judges of the United States District Court for the Northern District of California:

Now comes claimant herein and answers the libel

on file herein, admits and denies and alleges as follows:

I.

Admits the allegations contained in article one of said libel.

II.

Admits the allegations contained in article two of said libel.

III.

Admits that on or about the 7th day of July, 1917, there was delivered on behalf of libelants to the ship "Korea Maru" at the port of Manila, P. I., for transportation to and delivery at the port of San Francisco, California, 302 barrels of cocoanut oil weighing 136,677 pounds; admits that thereafter said steamship sailed upon said voyage and subsequently arrived at the port of San Francisco.

Alleges that claimant was and is ignorant as to the [15] then condition of said merchandise and whether it was in apparent good order or condition other than that certain of said barrels of cocoanut oil were leaking, and others thereof not leaking, were stained therefrom.

It denies, therefore, that any of said cocoanut oil or the barrels containing the same were in good order and condition, or good order or condition.

Denies that claimant, as the owner and operator of said steamship, agreed to deliver said merchandise at San Francisco in any other order or condition than as the same was when delivered to said steamship at Manila, P. I.

Admits that claimant failed to deliver all of said

cocoanut oil, but plaintiff does not know and has not been informed of the quantity thereof, and upon that ground denies that it failed to deliver any quantity thereof. Claimant has no knowledge whatever of the value of said cocoanut oil which it failed to deliver, if any, and upon that ground denies the same is of any value and calls for proof thereof.

Alleges that claimant as owner of said ship agreed to transport and deliver said merchandise as aforesaid in and by a bill of lading, and not otherwise, wherein and whereby it was agreed, among other things, after describing said merchandise, as follows:

“Leakage of contents at owner’s risk.”

Claimant alleges that the failure to deliver any quantity whatever of said cocoanut oil was due solely to leakage thereof.

#### IV.

Admits that on or about the 7th day of July, 1917, there was delivered by Carrero, Videl & Co. to said ship “Korea Maru” at the port of Manila, P. I., for transportation to and delivery at the port of San Francisco, California, forty barrels of cocoanut oil weighing 18,129 pounds; admits that thereafter said steamship sailed upon said voyage and subsequently arrived at the port of San Francisco. [16]

Alleges that claimant was and is ignorant as to the then condition of said merchandise and whether it was in apparent good order or condition other than that certain of said barrels of cocoanut oil

were leaking, and others thereof not leaking, were stained therefrom.

It denies, therefore, that any of said cocoanut oil or the barrels containing the same were in good order and condition, or good order or condition.

Denies that claimant, as owner and operator of said steamship, agreed to deliver said merchandise at San Francisco in any other order or condition than as the same was when delivered to said steamship at Manila, P. I.

Admits that claimant failed to deliver all of said cocoanut oil, but plaintiff does not know and has not been informed of the quantity thereof and upon that ground denies that it failed to deliver any quantity thereof. Claimant has no knowledge whatever of the value of said cocoanut oil which it failed to deliver, if any, and upon that ground denies the same is of any value and calls for proof thereof.

Alleges that claimant as owner of said ship agreed to transport and deliver said merchandise as aforesaid in and by a bill of lading and not otherwise, wherein and whereby it was agreed, upon other things, after describing said merchandise, as follows:

“Leakage of contents at owner’s risk.”

Claimant alleges that the failure to deliver any quantity whatever of said cocoanut oil was due solely to leakage thereof.

## V.

Admits that on or about the 7th day of July, 1917, there was delivered by Carrero, Vidal & Co. to the ship “Korea Maru” at the port of Manila,

P. I., for transportation to and delivery at the port of San Francisco, California, 200 barrels of cocoanut oil weighing 90,911 pounds; admits that thereafter said steamship sailed upon said voyage and subsequently arrived at the port of San Francisco. [17]

Alleges that claimant was and is ignorant as to the then condition of said merchandise and whether it was in apparent good order or condition, other than that certain of said barrels of cocoanut oil were leaking, and others thereof not leaking, were stained therefrom.

It denies, therefore, that any of said cocoanut oil or the barrels containing the same were in good order and condition, or good order or condition.

Denies that claimant, as owner and operator of said steamship, agreed to deliver said merchandise at San Francisco in any other order or condition than as the same was when delivered to said steamship at Manila, P. I.

Admits that claimant failed to deliver all of said cocoanut oil, but plaintiff does not know and has not been informed of the quantity thereof and upon that ground denies that it failed to deliver any quantity thereof. Claimant has no knowledge whatever of the value of said cocoanut oil which it failed to deliver if any and upon that ground denies the same is of any value and calls for proof thereof.

Alleges that claimant as owner of said ship agreed to transport and deliver said merchandise as aforesaid in and by a bill of lading and not otherwise wherein and whereby it was agreed upon

other things, after describing said merchandise, as follows:

“Leakage of contents at owner’s risk.”

Claimant alleges that the failure to deliver any quantity whatever of said cocoanut oil was due solely to leakage thereof.

#### VI.

Admits the allegations contained in article six.

#### VII.

Denies that said cocoanut oil was or is an article which required stowage in a cool and ventilated cargo compartment of said steamship for its proper or safe carriage; or that said [18] cocoanut oil required any other stowage than that usually given, and which was in fact supplied by claimant on said steamship. Denies that said cocoanut oil was improperly stowed in tanks in the after part of said steamship or immediately adjoining the engine-room, or at all improperly stowed. Denies that said oil was subjected to heat or was without proper or efficient ventilation; on the contrary, plaintiff alleges that said oil was not subject to any greater heat than that which is usually encountered at that time of the year, i. e., July, and the ordinary temperature of the P. I. and the usual course to the port of San Francisco; on the contrary, claimant alleges that there was sufficient ventilation to said oil. Denies that by reason of any improper stowage or any negligent or any act on the part of claimant said oil was caused to liquefy or to escape from the barrels in which it was contained; on the contrary, claimant alleges that cocoanut oil is a



commodity which easily liquefies under the ordinary heat of summer in the Philippines and on the usual course to the port of San Francisco and will when so liquefied escape from the barrels or containers unless the same be so constructed as to prevent such leakage. Claimant alleges upon information and belief that the barrels containing said cocoanut oil were not sufficient to prevent the leakage of the contents thereof when liquefied, and that by reason thereof and not otherwise the contents thereof leaked therefrom. Denies that the officers or crew or employees of claimant negligently or carelessly pumped any of said oil overboard or totally lost the same; on the contrary, claimant alleges that upon the leaking of any thereof same flowed into the bilge and was thence necessarily pumped overboard.

SAMUEL KNIGHT,  
F. ELDRED BOLAND,  
Proctors for Claimant. [19]

State of California,  
City and County of San Francisco,—ss.

K. Doi, being first duly sworn, deposes and says: That he is an officer, to wit, manager of Toyo Kisen Kaisha, claimant herein and makes this verification on its behalf; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters that are therein stated on information or belief, and as to those matters he believes it to be true.

K. DOI.

Subscribed and sworn to before me this 16th day of September, 1918.

[Seal]

JOHN E. MANDERS,  
Notary Public in and for the City and County of  
San Francisco, State of California. [20]

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**Answers to Interrogatories Propounded by Libellants Herein.**

Claimant answers Interrogatory No. 1 as follows:

In hold No. 5.

Claimant answers Interrogatory No. 2 as follows:

Immediately aft the engine-room.

Claimant answers Interrogatory No. 3 as follows:

The engine-room was separated from hold No. 5, in which the oil was stored, by a steel bulkhead in  $9\frac{1}{2}$  air space and then a wooden bulkhead 2" thick, furnishing complete insulation.

Claimant answers Interrogatory No. 4 as follows:

There were two ventilators leading to hold No. 5, which passed through the cold-storage compartment.

Claimant answers Interrogatory No. 5 as follows:

The dimensions of hold No. 5, where the oil was stored, are as follows: Breadth 28' 4"; width 24' 2"; height 9' 7".

Claimant answers Interrogatory No. 6 as follows:

Orlop-deck.

Claimant answers Interrogatory No. 7 as follows:

The compartment was closed by wooden hatch boards.

Claimant answers Interrogatory No. 8 as follows:

When so covered, air was circulating through the compartment by means of ventilators and through the thrust recess.

Claimant answers Interrogatory No. 9 as follows:

See answer to our Interrogatory No. 8.

Claimant answers Interrogatory No. 10 as follows:

If any escaped it went into scuppers and thence into the barrels.

Claimant answers Interrogatory No. 11 as follows:

The bottom of said hold No. 5 drained into scuppers, thence into barrels, and if any oil escaped, it was pumped into [21] the barrels by means of bilge pumps.

**Interrogatories to be Propounded to Libelants.**

1. a. By whom were the barrels in which the coconut oil was stored fabricated?
  - b. Of what materials were same fabricated?
  - c. Where were same fabricated?
  - d. How many hoops on each barrel and where placed and how fastened?
  - e. Was anything done to reduce porosity of barrels such as calcining?
2. a. What grade of coconut oil was in the shipment involved in this case?
  - b. What was the price paid per pound for same?
  - c. From whom was same purchased?
3. a. At what degree of temperature does coconut oil similar to that involved in this shipment liquefy?
  - b. What is the water content of said coconut oil?

- c. When liquid, does it tend to shrink or swell wood of the character used in said barrels?

[Endorsed]: Due service and receipt of a copy of the within answer, answers to interrogatories of libelant and interrogatories propounded to libelant by claimant is hereby admitted this 1st day of October, 1918.

McCUTCHEN, OLNEY & WILLARD,  
Proctors for Libelant.

Filed Oct. 1, 1918. W. B. Maling, Clerk. By  
T. L. Baldwin, Deputy Clerk. [22]

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In the Southern Division of the United States  
District Court in and for the Northern District  
of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,  
Respondent.

**Further Answer to Interrogatories Propounded by  
Libelants.**

Claimant answers interrogatory No. 1 as follows:

“Said cocoanut oil was stowed in hold No. 5 and hold No. 7.”

SAMUEL KNIGHT,  
F. E. BOLAND,  
Proctors for Respondent.

[Endorsed]: Due service and receipt of a copy of the within further answer to interrogatories is hereby admitted this 12th day of December, 1918.

McCUTCHEN, OLNEY & WILLARD,  
Proctors for Libelants.

Filed Dec. 19, 1918. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [23]

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In the Southern Division of the United States  
District Court in and for the Northern District  
of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship “KOREA MARU,” Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**(Answers to Interrogatories Propounded by  
Claimant.)**

Comes now libelants above named and in answer to interrogatories propounded by claimant, answer as follows:

In answer to Interrogatory 1a, libelants answer:

San Miguel Mill.

In answer to Interrogatory b, libelants answer:

California fir.

In answer to Interrogatory c, libelants answer:

San Miguel, P. I.

In answer to Interrogatory d, libelants answer:

Eight hoops with fasteners attached to barrels.

In answer to Interrogatory e, libelants answer:

Yes, glued.

In answer to Interrogatory 2a, libelants answer:

Fair, merchantable Manila.

In answer to Interrogatory b, libelants omit answer by stipulation.

In answer to Interrogatory c, libelants answer:

San Miguel Mill.

In answer to Interrogatory 3a, libelants answer:

[24]

75 to 80%.

In answer to Interrogatory 3b, libelants answer:

About 1%.

In answer to Interrogatory c, libelants answer:

Do not know.

CHARLES D. WILLITS and  
I. L. PATTERSON,

Copartners Doing Business Under the Firm Name  
of Willits and Patterson.

McCUTCHEM, OLNEY & WILLARD,  
Proctors for Libelants.

State of California,

City and County of San Francisco,—ss.

Charles D. Willits, being first duly sworn, deposes  
and says:

That he is one of the libelants in the above-entitled  
matter; that he has read the foregoing answers to  
the interrogatories propounded by claimant, and  
knows the contents thereof, and that the same is  
true of his own knowledge and belief.

CHAS. D. WILLITS.

Subscribed and sworn to before me this 6th day  
of February, 1919.

[Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Service of the within answers to  
interrogatories and receipt of a copy is hereby ad-  
mitted this 6th day of February, [25] 1919.

SAMUEL KNIGHT,

F. E. BOLAND,

Proctors for Respondent.

Filed Feb. 7, 1919. W. B. Maling, Clerk. By  
C. M. Taylor, Deputy Clerk. [26]

In the Southern Division of the United States  
District Court in and for the Northern District  
of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Amendment to Libel.**

Come now libelants in the above-entitled matter,  
and after leave of Court had in that behalf, amend  
their libel on file herein as follows:

I.

Strike out the words "by said heat to liquefy and,"  
appearing on line 25, page 3 of said libel.

McCUTCHEM & WILLARD,

Proctors for Libelants.

IT IS HEREBY STIPULATED that the verifi-  
cation to the foregoing amendment be and the same



is hereby expressly waived.

McCUTCHEM & WILLARD,  
Proctors for Libelants.

SAMUEL KNIGHT and  
F. E. BOLAND,

Proctors for Respondent and Claimant. [27]

[Endorsed]: Service of the within amendment to libel and receipt of a copy is hereby admitted this 21st day of May, 1919, reserving exception, however, to the order of the Court allowing the amendment.

SAMUEL KNIGHT and  
F. E. BOLAND,

Proctors for Claimant.

Filed May 21, 1919. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [28]

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In the Southern Division of the United States  
District Court in and for the Northern District  
of California, First Division.

IN ADMIRALTY—No. 16,302.

Before Hon. EDWARD F. CUSHMAN, Judge.  
CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel etc.,  
Respondent.

TOYO KISEN KAISHA, a Corporation,  
Claimant.

**(Testimony Taken in Open Court.)**

Tuesday, March 25th, 1919.

Counsel appearing:

JOSEPH B. McKEON, Esq., for the Libellant.

F. E. BOLAND, Esq., for the Respondents.

Mr. McKEON.—This is an action for damage to cargo, a shipment of cocoanut oil, loaded at Manila, and bound for San Francisco, and carried by the Japanese steamship “Korea Maru.” The cargo was stowed in two different compartments on the ship; most of it was stowed in what will be described here as No. 5 [29] tank, No. 5 tank being a portion of No. 5 hold; the balance of the cargo, a small portion of it, was stowed in No. 7 hold, No. 7 hold being a considerable distance away from No. 5 tank. No. 5 tank, where the most of the damage occurred, and where most of the cargo was stowed was directly abaft of the engine-room, and separating the engine-room from this steel tank compartment, where this oil was stowed, was a steel bulkhead, and separating the steel bulkhead from the cargo were what is known as cargo battens, the lattice-work; it is not a solid wooden bulkhead at all; I have photographs of that compartment, so that that will be clear.

Our contention is that the ship is liable for the damage because of negligence and improper stowage; that No. 5 tank was an improper place to carry cocoanut oil. Cocoanut oil is a commodity that requires free ventilation; and that there was abso-

lutely not a bit of air in this No. 5 tank where this oil was stowed.

The COURT.—Is the tank an open top tank?

Mr. McKEON.—No, the tank is a square compartment, and the only opening into it is on the hatch above; the tank is located on the lowest portion of the ship, elevated from the lower hold. The “Korea Maru” is a very large ship and has several decks; on *took* of the floor of the engine-room and raised is this tank; that you might describe as the deck. On top of that is the ’tween-decks; on the ’tween-decks there is a hatchway which opened into this No. 5 tank. The cargo loaded into No. 5 tank, as testified to by the first officer and master of the ship in the depositions, is lowered right through the hatch down into this cargo compartment; it is lowered like that, and swung into the hold; the testimony [30] already taken shows that the only opening into this compartment is through this hatchway. The testimony already taken shows that over this tank, and the only opening into it, they had hatch boards, and on top of the hatch boards they had seven feet of cargo; that took it to the ceiling of the next deck, the ’tween-decks, then of course they had cargo stowed up to the main deck, and then the main deck has a main hatchway, which is the main opening into the hold.

The COURT.—The hatch to the ’tween-decks was opened or closed?

Mr. McKEON.—Was closed; in other words, the No. 5 tank, where this cargo was stowed, was completely covered over with hatch boards and on top

of the hatch boards seven feet of cargo.

The COURT.—What kind of cargo?

Mr. McKEON.—Cocoanut oil, barrels of cocoanut oil. The floor of the tank is steel, and surrounding it there is steel except that there are two wooden bulkheads, two solid wooden bulkheads as the photographs will disclose, separating the water tanks, fresh-water tanks, on either side of this compartment.

Those tanks we propose to show did not contain cold water, as the master and chief officer testified, but contained hot water. We also propose to show that all of the heat from the engine-room would reach this compartment, and that the two emergency escapes which pass through this No. 5 tank, which have been referred to by the first officer of the ship and the master as ventilators are not ventilators, and are not intended for ventilation, and never ventilated that compartment at all. They have opening into this No. 5 tank and these two emergency escapes two steel doors which were the [31] same size as one of the sides of this escape; that door is five feet high and the width of the square emergency escape, this being a steel emergency escape passing through the thrust recess in the engine-room clean through to the top deck, and on the top deck instead of having a ventilator top, it has what is known as a mushroom top, which is an out-take and not an in-take for fresh air at all; there are two of the steel emergency escapes in the ship, and they both pass through this No. 5 tank where this cargo was stowed. The ship's testimony already taken was

to the effect that these 5-foot doors that I speak of were open, and that that gave plenty of ventilation to this cargo. I propose to show they were not open, but taking their own testimony as it is, if they were open, it would be worse because the hot air from the engine-room would pass through these out-takes and through these open doors into this compartment and make that compartment hotter than it otherwise would have been. But, assuming that the doors were closed, which I propose to show, the hot air passing up from the engine-room—and, mind you, this opened right into the engine-room—would heat these steel emergency escapes and the steel of course would throw the heat into this cocoanut oil just the same as the engine-room would.

The ship signed clean bills of lading for this cargo at Manila. The cargo was delivered in a damaged condition here; many of the barrels coming out of the No. 5 were absolutely empty; all of them were dripping. We could see daylight through some of the openings in the barrels, and the hoops were loosened. The effect of the heat on barrels is to retract the barrel, causing the oil to expand and it is bound to get out. It did get out of these barrels, and the tanks, which of course have a steel [32] bottom to them did not retain the oil; it passed out through the scuppers into the bilges and was pumped probably overboard. A long time after the ship was libeled—I don't know how many months afterwards—we were told that they had collected some of that oil that had escaped from these barrels—we don't know whether it was our

oil or not, but we took some of it, and gave them credit for the oil that they said they had recovered from the cocoanut oil.

On the law of the case, I do not think there is going to be much room for argument. The principles are very well settled. The bill of lading upon which the other side rely provided that the leakage of contents was at owner's risk. I cheerfully assume the burden that that throws upon me of proving negligence. And the negligence I propose to show is improper stowage and unseaworthiness in the respect of the carriage of that oil.

The answer admits the delivery of the oil to the ship and in the quantities pleaded, and denies contents of the barrels. Certain stipulations have been entered into to expedite some of these matters, and I will introduce those in regular order. The defense that the ship has pleaded is as I say the bills of lading were, leakage at owner's risk, and an allegation that the containers were not sufficient. I think that practically covers the situation. Is there anything else, Mr. Boland?

Mr. BOLAND.—For your side that is a fair statement, Mr. McKeon.

Mr. McKEON.—Do you want to make a statement now?

Mr. BOLAND.—I think, your Honor, Mr. McKeon has covered our defense, that is, that the damage, if any, was caused by leakage of the contents of the barrels, which it is pleaded [33] was due to heat, causing it to liquefy and thus escape from

(Testimony of John H. Rinder.)

the containers. The bills of lading except liability for leakage, which completely exonerates the carrier, when libelant shows that their injury occurred only through the excepted clause of leakage.

**Testimony of John H. Rinder, for Libelant.**

JOHN H. RINDER, called for the libelant, sworn.

Mr. McKEON.—Q. Captain, what is your profession?

A. Master mariner before and Nautical Surveyor now—marine surveyor.

Q. How long have you been a master mariner?

A. How long have I been a master mariner or been to sea altogether, your mean?

Q. Yes. A. About 34 years.

Q. You were master of Pacific Mail liners, were you not? A. Yes.

Q. What is your present occupation, Captain?

A. Marine surveyor.

Q. How long have you been engaged as such?

A. About eleven years.

Q. Did you make an examination of the steamship "Korea Maru"?

A. That one particular compartment where the oil was carried?

Q. No. 5 tank? A. Yes.

Q. Captain, assume that that compartment had cocoanut oil stowed in it in barrels, and that the hatch above was covered over with hatch boards, and on top of the hatch boards there was seven

(Testimony of John H. Rinder.)

feet of cargo stowed in the 'tween-deck above, to the ceiling of the 'tween-decks, would that cargo get any ventilation?

A. No; no means of ventilation at all.

Q. Did you notice the two emergency escapes passing through [34] No 5 tank? A. Yes.

Q. What are they—are they ventilators?

A. No, certainly not; they are steel doors fitted with clamps to make them practically air-tight—practically air-tight.

Q. How tall are they?

A. I did not measure them; I guess they are about 5 feet high; somewhere about that.

Q. Is that an ordinary opening of the ventilator into any cargo compartment that you have ever seen. A. No.

Q. Assume, Captain, that these doors just described in these emergency escapes were open at the time that that cargo was stowed in there, what is the effect, or, rather, what air would pass into that compartment through those doors, hot air or cold air?

A. The hot air rising from the engine-room.

Q. What sort of opening have those emergency escapes on the top deck.

A. Mushroom ventilators—mushroom tops.

Q. What is the common expression for ventilators with mushroom tops?

A. Up-take ventilators.

Q. In other words, they do not permit the air to go down?



(Testimony of John H. Rinder.)

A. They do not permit the air to go down.

Q. They take the hot air out from below?

A. The hot air from below as it rises.

Q. In your opinion was that a proper place to stow cocoanut oil? A. No.

Mr. BOLAND.—I do not think you have qualified the captain to testify as to cocoanut oil; he is a master mariner and he has not testified to any familiarity with cocoanut oil.

Mr. McKEON.—Q. Have you supervised the stowage of cargo in the “Korea Maru”?

A. Yes.

Q. You have had a great deal to do with cocoanut oil, haven't you, Captain?

A. In the last year or two; yes. [35]

Q. Is cocoanut oil a commodity that requires free ventilation? A. Certainly.

Q. Now, Captain, I will ask you whether or not that cargo compartment, without any air in it at all, without any ventilation, is a proper place for the stowage of cocoanut oil? A. I say certainly not.

Q. Have you examined No. 7 hold of the “Korea Maru”? A. No.

Q. Are you familiar with No. 7 hold at all?

A. I know just about what it is like, right in the run of the ship.

Q. It has ventilators, hasn't it?

A. That I did not notice.

Q. Captain, assume that the fresh-water tanks alongside of the No. 5 tank had hot water in them, would that have a tendency to heat No. 5 tank?

(Testimony of John H. Rinder.)

A. Certainly; the hot-water tanks on each side are bound to heat it.

The COURT.—What size are these?

Mr. McKEON.—They are a different tank altogether. This particular tank where No. 5 is between round tanks.

The COURT.—But the cubic contents of the water-tank would bear about what relation to the cubic contents of No. 5 tank?

Mr. McKEON.—I don't know. I can probably get that.

The COURT.—Just roughly.

The WITNESS.—I think it would be about one-third—something like that.

The COURT.—The witness says the water tanks would be about one-third the contents of the other.

Mr. McKEON.—I think he is in error on that. The fresh-water tanks I think are larger.

The COURT.—If you will have other witnesses to that, that will be sufficient. [36]

Mr. McKEON.—Q. Would the hot air passing from the engine through these emergency escapes have a tendency to heat that compartment?

A. Certainly; it would heat the four sides of the steel escape.

Q. What are the purposes, Captain, if you know, do these emergency escapes serve on a ship?

A. They are not supposed to serve any other purpose—they are supposed to be an escape from the engine-room.

Q. That is the purpose I wanted—the escape

(Testimony of John H. Rinder.)

from the engine-room. That is all.

The COURT.—Q. An escape for what?

A. For a man in case of trouble down below.

The COURT.—I understand now. I did not know whether it was an escape for hot air or for human beings.

Mr. McKEON.—They have an iron ladder.

The WITNESS.—They have iron ladders up into it.

The COURT.—I understand.

Cross-examination.

Mr. BOLAND.—Q. You were with the Pacific Mail, were you? A. At one time.

Q. For many years?

A. Not very long. I was with the O. & O. Company, practically the same thing, for a great many years.

Q. At what period were you employed by the Pacific Mail? A. In 1904 and 1905.

Q. What vessel did you command?

A. The "Mongolia."

Q. The "Mongolia"? A. Yes.

Q. What is the tonnage of the "Mongolia"?

A. About 14,000.

Q. For the O. & O., what vessel did you command? A. The "Coptic," the "Belgic."

Q. What size vessel was that?

A. About 4,500.

Q. And the "Mongolia" is 14,000?

A. Yes. And after that the "Minnesota," 21,000. [37]

(Testimony of John H. Rinder.)

Q. On the "Mongolia," did you carry any cocoanut oil?     A. No.

Q. Never carried any?     A. No.

Q. On the "Minnesota," did you carry some?

A. No.

Q. Did you ever carry any on the "Coptic"?

A. No.

Q. You never carried any cocoanut oil on any vessel of which you were in command?

A. Not that I know of.

Q. Then, so far as practical knowledge, as a master mariner, in command of vessels, is concerned, you don't know whether this was a proper place to stow cocoanut oil or not.

A. No, but from my last two years' experience here as a marine surveyor, I have learned a good deal about handling it.

Q. We can eliminate the 35 years' experience and get down to the last two years, then. What is the liquefying point, Captain, of cocoanut oil?

A. That I cannot tell you.

Q. You don't know?     A. No.

Q. Do you know what period of the year this cocoanut oil was shipped?     A. No.

Q. You don't know whether it was winter or summer?     A. No.

Q. Assume, Captain, that the cocoanut oil was shipped in the winter, we will say—I will withdraw that question. If you don't know the liquefying point of cocoanut oil, how can you say that it was improperly stowed in hold No. 5?

(Testimony of John H. Rinder.)

A. From the experience I have had in the last two years, seeing cargoes come out of different ships something like the same condition, owing to extreme heat.

Q. You say you don't know whether there was any ventilation of hold No. 7 or not?

A. No; I did not look in hold 7.

Q. Do you know, as a matter of fact, whether the oil that came out in this particular cargo from hold 7 was in substantially the same condition as that from hold 5 or not?

A. I know nothing about the condition of the cargo when it came out.

Q. You did not see it?

A. I did not see it. [38]

Q. Your statement that hold 5 was an improper place is based upon what?

A. My practical knowledge of the heat that would be generated from the engine-room all around that compartment.

Q. But you don't know at what temperature oil liquefies, Captain.

A. I know there is heat enough from that engine-room to liquefy that oil.

Q. What is the heat of the engine-room?

A. Even if it is stowed in one of the other holds, sometimes it will liquefy, when the weather is very warm.

Q. When the water is very warm? A. Yes.

The COURT.—Which, weather or water?

(Testimony of John H. Rinder.)

A. When the water and weather is warm, at Manila, for instance.

Mr. BOLAND.—Q. Then, if it liquefies in other holds, ventilation really hasn't anything to do with it?

A. Yes, it has; you are not using due diligence if you put it into a place that is heated as that was.

Q. You are not?

A. Not in my opinion, as hot as that was.

Q. Will you now refer to some of the vessels that you have seen in the last two years to which you have just made reference?

A. The "L'Avenir" in this port discharged cargo like that; she has no engines.

Q. She is a sailing vessel?

A. A sailing vessel, but she has got tanks.

Q. Was there leakage in the "L'Avenir"?

A. Yes, bad leakage.

Q. There was no engine-room there?      A. No.

Q. What caused it there?

A. It was stowed in loose copra—the barrels were stowed in loose copra.

Q. Did you take the temperature of that loose copra?      A. No.

Q. You don't know what temperature it was?

A. No. [39]

Q. Why did the loose copra cause it to leak?

A. Copra always generally does heat, practically always heats.

Q. But you don't know whether this was hot or not in this particular "L'Avenir"?

(Testimony of John H. Rinder.)

A. Yes, I do happen to know it, because I had my hand in it.

Q. You don't know what temperature it was?

A. No.

Q. Did you go into the forward hold of the "L'Avenir"?

A. Yes.

Q. What was the temperature of the copra in the forward hold as compared to the after hold of the "L'Avenir"?

A. There was a lot of salt water in the forward hold of the "L'Avenir," and she was smoking.

Q. She was much hotter in the forward hold, was she not?

A. Yes.

Mr. McKEON.—I don't think we are trying the "L'Avenir" case, but the "Korea Maru."

The COURT.—I sustain the objection.

Mr. BOLAND.—Q. Your reference to the "L'Avenir" is without any reference to actual temperature, then, except as you felt it?

A. Certainly.

Q. Name some other vessel, Captain?

A. I don't know as I could, offhand; I have not had one case where cocoanut oil was stowed in a compartment like that on the "Korea," subject to the action of such great heat as would be generated around that tank in No. 5 in the "Korea."

Q. It is the fact that cocoanut oil liquefies that causes it to leak from the barrels, is it not, Captain?

A. Of course, the barrels shrink and the hoops will loosen up.

(Testimony of John H. Rinder.)

Q. Did you see the barrels in this particular case?

A. No, I told you I did not; I did not see the cargo.

Q. Did you see the "Flying Cloud"?

A. I did.

Q. Were you employed on that case, Captain?

A. I was.

Q. Do you know the temperature of the oil in that? A. No. [40]

Q. There was leakage there?

A. Yes, considerable.

Q. The "Ten Paisen Maru," do you know anything about that? A. Yes.

Q. The same leakage there, was there not?

A. Yes.

Q. In the "Ten Paisen Maru," was it packed in loose copra? A. No.

Q. What caused the leakage there, in your judgment? A. Heat, I suppose.

Q. You suppose heat? A. Yes.

Q. Have you any other opinion?

A. Yes, I have, but I don't think you have any right to bring that up, as that case is coming into court.

Mr. McKEON.—If your Honor please, that is another case that I happen to be interested in, and I do not want to try it here at this time.

The COURT.—The objection is sustained.

Mr. BOLAND.—Q. If the barrels do not shrink,



(Testimony of John H. Rinder.)

Captain, will there be shrinkage of the cocoanut oil?

A. If the barrels do not shrink?

Q. Yes, and the oil is liquefied.

A. If the oil is liquefied and the barrels leak, the oil is going to escape.

Q. But if the barrels are tight when the oil is put in, and they do not thereafter shrink, will there be any leakage of oil from the barrels?

A. I suppose not, if they remain in the same state as when they were tight, I do not see why they should leak.

Q. Then, the mere fact that the oil liquefies, Captain, is not the cause of leakage?

A. It may be because of faulty barrels.

Q. My two questions have to be answered together, more or less, Captain; assuming that the oil is liquefied when it is put into the barrel, and the barrel is in good condition and the barrel [41] does not thereafter shrink, there will be no leakage. That is a fact, is it not?

A. There should not be

Q. Then, the mere fact that the oil is liquefied is not the cause of the leakage. Is that the fact? It is the shrinkage of the barrel which causes the leakage, is it not?

A. The heat that the oil generates shrinks the barrel.

Q. It is the shrinkage of the barrel, and not the liquefying of the oil which causes the leakage?

A. The hoops loosen.

(Testimony of John H. Rinder.)

The COURT.—The Court will take judicial notice of the fact it would not leak if it was not liquid.

Mr. BOLAND.—If your Honor catches the drift of the question, it would have to be liquid, and there would have to be a hole in the barrel before it leaked out. Those two things would have to exist. I will call your Honor's attention to the libel in this case, and it will perhaps illustrate what I was getting at. "That by reason of said improper stowage and said negligent care of said cargo, said cocoanut oil was caused by said heat to liquefy and to escape from the barrels in which same was contained to the bottom of said tanks in which it was stowed."

There is not a word in this libel to the effect that anything ever caused the barrels to shrink, and we are not put upon notice that there is going to be a claim in this case that the heat was so great as to cause the barrels to shrink; consequently, unless the libelant can prove that the liquefaction of the oil caused his loss, then he must either amend his libel or he fails in this case.

The COURT.—Proceed.

Mr. McKEON.—The fact is simply this, that these barrels, because of the heat, retracted, the oil expanded, and it has got to get out. [42]

The COURT.—Are you through with your other examination?

Mr. BOLAND.—No. I am proving by this witness exactly the point I am making.

Mr. McKEON.—I think it is proper to state, in

(Testimony of John H. Rinder.)

view of what he has said, it is our contention we do not have to show whether it got out because the barrel shrunk or because the oil expanded; it was in there and it got out because of the negligence of the ship, and it is up to them to show which is which.

Mr. BOLAND.—On the contrary, the opening statement, which we may take as true to that extent, is that the bills of lading in this case except injury by leakage. Therefore, the burden is upon the libelant to prove, as he stated to your Honor, negligence in stowing—the negligence that he alleges is leakage by reason of liquefaction, and there is not a word that th barrels were caused to shrink.

Mr. McKEON.—We do not have to allege it.

The COURT.—That is something to argue when you get your evidence in.

Mr. BOLAND.—For that reason, my evidence that I was bringing out by this witness is absolutely competent under my construction of the pleadings in this case.

The COURT.—I have simply stated I do not see how anything of this nature would leak as long as it was solid. Of course, there is no evidence yet that its liquefaction makes it expand. Of course, if it was barreled up tight and liquefaction did make it expand, naturally, the pressure would be greater.

Mr. BOLAND.—As to that, Mr. McKeon is laboring under some difficulty in going to trial this

(Testimony of John H. Rinder.)

afternoon, and I have [43] not made any objection to the answer of the witness based on something that I think is not in evidence. Otherwise, I would have drawn out the examination interminably. I think Mr. McKeon realizes that, and that is the reason for that. Will you read the question?

(The last question and answer repeated by the reporter.)

Q. Will you answer the question directly, Captain? Your answer is rather a negative answer. Will you read the question again, and then you can answer it, Captain.

(The last question repeated by the reporter.)

A. What is it you wish?

Q. That is, the cause of the leakage is the shrinkage of the barrel, and not the mere fact that the oil is liquefied?

A. It is shrinkage—the heat of the hot oil shrinks the barrel.

Q. That is what causes the leakage?

A. In some cases; of course, there may be a defect in the barrel.

Q. If the barrel remained tight there would be no leakage. That is the conclusion, is it?

A. That would be a sane conclusion to arrive at.

Q. What heat, Captain, will cause a barrel to shrink, what temperature?

A. That I cannot tell you; I am not an expert cooper.

Q. How many shipments have come in, in your

(Testimony of John H. Rinder.)

experience at this port, in the last two years, where there has been no leakage?

A. It would be very difficult to give an answer to that question.

Q. Have there been any?

A. I don't know that I can recall them.

Mr. McKEON.—The captain, probably, would not hear of them unless there was leakage.

A. I could not answer that; it is too general a question to ask; [44] I could not answer it.

Mr. BOLAND.—Q. Have there been any that you know of coming into port in the last two years where there has been no leakage?

A. Yes, there have been some cases come in without any leakage at all.

Q. Isn't there always a normal amount of leakage in cocoanut oil?

A. No, I think some cases come in with absolutely clean discharges.

Q. Is that merely a thought on your part, or is it knowledge?

A. I am telling you I cannot specify any particular case, any specific case.

Q. I will put it in the affirmative: Isn't it a fact that there is always a normal or a small or normal amount of leakage in cocoanut oil shipments?

A. You might put it that it generally is, not always.

Q. Do you know what that normal leakage is?

A. Average, you mean?

Q. Yes, you might take the average or normal.

(Testimony of John H. Rinder.)

A. No, I would not put myself on record as naming any figure for that.

Q. You would not want to say it was 1 or 5 per cent? A. No.

Q. Do you know, Captain, the effect, if any, of cocoanut oil—by the way, what are these barrels made of, first?

A. I don't know. I told you I did not see the barrels.

Q. I mean any barrels that are coming into port.

A. Some of them are made of pine and some of them made of oak.

Q. Assume a pine barrel: Do you know the effect, if any, of the oil on the barrel independent of the application of sufficient heat to liquefy the oil such as it is when put in?

A. That is a question the answer to which has been very anxiously sought after all over this city in commercial circles, and I have not yet met a man who could give [45] an answer to it.

Q. Will you elaborate that, to some extent?

A. I cannot elaborate it, because I don't know anything about it, and I can't find anybody who can tell.

Q. There is some effect, then, on barrels, pine barrels, by oil, is there? A. We think there is.

Q. What are the views about it, *pro* and *con*?

A. I cannot say what is thought of it generally. I have had a great deal of experience with it, and I would very much like to know what the cause is

(Testimony of John H. Rinder.)

myself, but I have not met any chemist, even, who could tell you what it is.

Q. Tell me what the ideas are, *pro* and *con*, about town; the merchants would like to know, and I think his Honor would like to know.

A. I would, if I could tell you anything. I am saying I cannot tell you anything, because I do not know.

Q. What are the two views?

A. There are more than two; there are a good many views. I would not bring that question up now.

Q. I am asking you for it.

Mr. McKEON.—I don't know whether that is a proper way to prove it.

A. I am simply telling you I cannot give you any light on the subject, because I do not know myself.

Mr. BOLAND.—Q. Is it a fact, Captain, that some people in town think that cocoanut tends in itself to shrink a pine barrel?

Mr. McKEON.—If your Honor please, I do not think that is a proper way to prove that.

The COURT.—Some people in town might not know any more about it than I do.

Mr. BOLAND.—But the Captain is dealing with people who do.

The COURT.—Your question did not put it exactly that way. [46] I sustain the objection to the question in its present form.

Mr. BOLAND.—Q. Dealing with these persons

(Testimony of John H. Rinder.)

who are also interested as you are, or as you say you are, in cocoanut oil shipments, among merchants, marine surveyors, etc., in San Francisco, is it not a fact that among those persons, the cognoscenti, we will call them—isn't it a fact that many of them hold the view, and so express it, that cocoanut oil causes a shrinkage of a pine barrel?

A. Yes, and an oak barrel, too.

Q. And an oak barrel, too?

A. Yes; a great many people say so, but nobody knows what they are talking about, to give an answer to go on record with, nobody that I have met.

Q. That is what I wanted as an answer, and that is what I understood to be the fact. That is all.

#### Redirect Examination.

Mr. McKEON.—Q. Was No. 5 tank a fit compartment for the carriage of any cargo that required ventilation? A. In my opinion, no.

Q. Whether cocoanut oil or not?

A. Cocoanut oil, or not.

Q. Captain, in your experience, in dealing with cocoanut oil, have you or have you not formed the conclusion that ventilation is imperative?

A. Certainly.

Q. And heat is dangerous?

A. Unquestionably.

Mr. McKEON.—That is all.

#### Recross-examination.

Mr. BOLAND.—Q. Assume that there was ventilation in hold No. 7 on the "Korea Maru," and that



(Testimony of John H. Rinder.)

the oil from that hold came out in substantially the same condition as the oil from hold 5, would you say that hold 7 was an improper place to stow cocoanut, as well as hold 5?

A. No, I should still maintain that No. 5 hold was an absolutely improper place to stow cargo [47] of that nature.

Q. If the oil from hold 7 was in the same condition, approximately, and hold 7 was ventilated, would your conclusion be that hold 7 was an improper place to stow? A. No.

Q. Will you explain your answer?

A. No. 5 tank, as now constructed, in my opinion, is not fit to carry anything that would be damaged by heat, excessive heat that would come in hot weather going through the tropics, as this ship does, from the engine-room. No. 7 hold is a totally and absolutely different proposition. It is away from the engine-room.

Q. I am assuming that the oil from hold 7 came out in the same condition as hold 5.

A. I don't know as to that. I told you I knew nothing about the condition it came out in.

Q. I am asking you to assume that.

A. I am just telling you my opinion of the conditions of stowing cargo, the same sort of cargo in both holds.

Q. I am asking you to assume that it did come out in the same condition, and that hold 7 was ventilated, is it your conclusion that hold 7 would be an improper place to stow it?

(Testimony of John H. Rinder.)

A. No; No. 7 hold is all right for stowing anything of that sort.

Q. What is your conclusion from the fact, which I asked you to assume, that the oil coming from hold 7 was in the same condition as the oil that came from hold 5; will you explain it, please?

A. I do not understand what you want.

Q. We are assuming, for the moment, that the oil from hold 7 came out, the oil in the barrels, in identically the same condition, substantially the same condition as from hold 5. A. Yes.

Q. You say that hold 5 was improper. I tell you that hold 7 had ventilation. Would your conclusion be that hold 7 was also an improper place, notwithstanding the ventilation?

A. I cannot get your point. I do not see what you are driving [48] at.

Q. I will go over it again: The oil from hold 7 came out in the same leaky condition as the oil from hold 5, but hold 7 was ventilated. What would cause the difference?

A. I can't answer that question.

Q. Would your conclusion be that hold 7 was an improper place to stow the oil?

A. No, I should say most likely the barrels were very faulty in the first place, the containers.

Q. Were faulty in the first place?

A. That is the first thing I should go to look for, anyhow.

Q. You have no other conclusion, then, after the facts that I have stated?

(Testimony of John H. Rinder.)

A. That would be the first thing you would look for, and the stowage.

Q. Then your conclusion would be that if the oil came out in the same condition, still that hold 7 would be a proper place, and hold 5 an improper place? A. Absolutely.

Mr. BOLAND.—That is all.

Mr. McKEON.—That is all.

**Testimony of G. J. Lehnhardt, for Libelant.**

G. J. LEHNHARDT, called for the libelant, sworn.

Mr. McKEON.—Q. Mr. Lehnhardt, you are a master mariner? A. Yes.

Q. How long have you been going to sea?

A. About 15 years.

Q. Did you ever sail in the "Korea Maru"?

A. Yes.

Q. Will you describe the positions you have held on the "Korea Maru"?

A. I was carpenter in her, and then I was fifth mate, fourth mate, third mate, and second mate.

Q. At any time while you were one of the ship's officers, did you ever have occasion to supervise the stowage of cargo in No. 5 tank? A. Yes. [49]

Q. Do you know No. 5 tank? A. Yes.

Q. Do you know the two pipes that pass up through No. 5 tank? A. The escapes; yes.

Q. What are they? A. Escapes.

Q. Are they ventilators? A. No.

Q. Were they ever intended or constructed as ventilators? A. No.

(Testimony of G. J. Lehnhardt.)

Q. Do you know the hatch, the open hatch above No. 5 tank? A. Yes.

Q. That hatch is not directly over the center of No. 5, is it? A. No, it is not.

Q. Assume, Captain, that that hatch had hatch boards on it and there was cargo stowed on top of the hatch boards, and the doors that opened from these emergency escapes into No. 5 tank were closed, would there be any air getting into that compartment, any cool air? A. No.

Q. Is there any heat in that compartment, from the engine-room?

A. Yes, it comes up through the escapes; it is right over the engine-room, the after part of the engine-room.

Q. Would any hot air, passing through those emergency escapes from the engine-room, heat the steel sides of these escapes?

A. Yes, naturally; the deck would be hot, too.

Q. The deck would be hot as well? A. Yes.

Q. That is a steel deck?

A. That is, the bottom of No. 5 tank? A. Yes.

Q. The master and chief officer of this ship testified that the tanks on the side of this No. 5 tank are cold, fresh-water tanks. Is that the fact?

A. When they leave port they are filled up with water, and when out a while that has condensed water, and that would be hot water—that would be one [50] tank would be hot.

Q. One tank would be hot? A. Yes.

Q. Then you make water after you leave port?

(Testimony of G. J. Lehnhardt.)

A. After we leave port.

Q. Two or three days out? A. Yes.

Q. And during all that time until you get into port, these tanks would have hot water?

A. That one tank would.

Q. One tank? A. Yes.

Q. Where do you keep your cold, fresh water for the supply of the ship?

A. That goes up to a tank, it is pumped up, on the upper deck.

Q. That is located on the upper deck? A. Yes.

Q. From that tank on the upper deck the ship's fresh water supply is taken?

A. It gravitates down.

Q. Through the various pipes throughout the ship? A. Yes.

Q. Mr. Lehnhardt, at any time that you were aboard the "Korea Maru" as ship's officer, or as carpenter, were these doors opening into No. 5 tank ever opened, except when the ship was in port?

A. That is the only time, in port. [51]

Q. Assume that those doors were, as the master and chief officer of the ship testified, open; what sort of air would get into No. 5 tank?

A. The air from the engine-room, hot air.

Q. There would not be any cold air get in there, would there? A. No.

Q. What sort of openings have those escapes on the top deck? A. A mushroom top, a flat top.

Q. Are they constructed for the purpose of taking in air? A. No.

(Testimony of G. J. Lehnhardt.)

Q. What are they commonly referred to as?

A. Escapes.

Q. I am talking about the mushroom tops. Are they out-takes or intakes? A. Out-takes.

Q. By out-takes, you mean for taking air out of the ship? A. Yes.

Q. What is your opinion, Captain, with respect to the question as to whether No. 5 tank is a proper place for the stowage of any cargo that requires ventilation? A. A poor place for it.

Q. A poor place for it? A. Yes.

Q. Could they find a worse place on that ship for the stowage of cargo that required ventilation than No. 5 tank? A. No.

Mr. McKEON.—That is all.

Cross-examination.

Mr. BOLAND.—Q. Where is the refrigerator plant on the “Korea Maru”?

A. Down in the engine-room.

Q. The refrigerating plant is in the engine-room. Where is the cold storage?

A. That is just above the engine-room.

Q. Anywhere near No. 5?

A. Above and forward of No. 5.

Q. So that it comes in contact with it, does it?

A. No, it is above it.

Q. How far above it? A. One deck.

Q. On the next deck, or is there a deck between?

A. One deck above the No. 5.

Q. There is a deck between No. 5 tank and the refrigerating [52] plant, or is it right on the next

(Testimony of G. J. Lehnhardt.)

deck? A. The next deck above.

Q. Does that have any effect on the temperature of No. 5? A. No.

Q. Why not?

A. Because it is all sealed; there is asbestos on the bottom, underneath the deck.

Q. In your judgment, it has no effect, whatever?

A. No.

Q. It has no effect, whatever, upon the temperature? A. No.

Q. How far off is No. 7 hold from No. 5?

A. There is first No. 5, and then No. 6, and then No. 7.

Q. Has No. 7 any ventilation?

A. I believe it has; I am not certain, though.

Q. If it has, is it a better place for the stowage of cocoanut oil than No. 5? A. Yes.

Q. Assume that there is oil stowed in both, and it came out of both in approximately the same condition, how would you explain that?

A. If the oil came out leaking in both her holds?

Q. Yes.

A. The chances are the barrels were in bad order.

Q. In both? A. Yes—in No. 7.

Q. If the barrels came from the same place, were all new barrels, the same shipment, how would you explain it?

A. Maybe some of the hoops were driven up harder than others on the barrel.

Q. Do you think that would be consistently so with the whole shipment in No. 7 as compared to the shipment in No. 5?

(Testimony of G. J. Lehnhardt.)

A. I don't know anything about that.

Q. You don't know anything about this particular shipment, at all? A. No.

Q. Did you ever carry cocoanut oil on board while you were on the "Korea Maru"?

A. I don't know. We carried oil, but I don't know whether it was cocoanut oil or not—I don't know what kind of oil it was. [53]

Q. Where did you stow it while you were on board? A. We carried it in No. 1 and No. 2.

Q. Is there any ventilation in there? A. Yes.

Q. Did you ever have any trouble with it?

A. No.

Q. You don't know whether it was cocoanut oil, or not? A. I do not.

#### Redirect Examination.

Mr. McKEON.—Q. You never carried any oil in No. 5 tank, did you? A. No.

Q. Captain, something has been said about the cold-storage plant being close to the tank. As a matter of fact, that is on top of the 'tween-decks, isn't it? A. It is one deck up.

Q. One deck above? A. One deck above.

Q. It is not on top of the deck immediately on top of No. 5 tank, is it? A. No.

Q. Do you know in feet the distance between the bottom of the 'tween-decks and the top of the deck below which is No. 5 tank?

A. I think the head room in between the rooms is 7 feet 6, so that would be two decks up, and that would be 14 feet, about.



(Testimony of F. C. Gaster.)

Mr. McKEON.—That is all.

Mr. BOLAND.—That is all.

**Testimony of F. C. Gaster, for Libelant.**

F. C. GASTER, called for the libelant, sworn.

Mr. McKEON.—Q. Mr. Gaster, do you know the shipment of cocoanut oil that came in on the “Korea Maru” in 1917? A. Yes.

Q. At that time, were you employed as one of the stevedores or hatch-tenders on the “Korea Maru”?

A. I was hatch-tender on No. 5 hatch.

Q. Did that enable you to see into No. 5 tank?

A. Yes, when [54] the hatch doors were off.

Q. Do you remember the condition in which that shipment of Willits & Patterson came in in 1917?

A. I don't know who it was consigned to, but I know it was in very poor condition, leaky barrels.

Q. Did you see these barrels in the tanks?

A. Yes.

Q. What condition were they in?

A. Well, they were very leaky; when they went out in the sling overhead there were a great many empty barrels, and some of them you could see daylight through, and others you could not, and others the oil was running out of them.

Q. How about the hoops on the barrels? Were they loosened?

A. Some of them had a few hoops off, and others there were no hoops on.

Q. Did you go down in that No. 5 tank?

A. Yes.

(Testimony of F. C. Gaster.)

Q. Do you know the two emergency escapes in No. 5 tank? A. Yes.

Q. Are the doors in that escape open? A. No.

Q. Was there any other opening at all into that No. 5 tank? A. Not to my knowledge.

Q. With the hatch boards on that No. 5 tank and cargo stowed on top of the hatch boards, and the doors opening out in the emergency escape closed, would there be any ventilation in that No. 5 tank?

A. Not that I know of.

Q. Is there any possible place for air to get in there, that you ever saw? A. Not that I know of.

Q. In your opinion, is that a proper place for the stowage of cargo that requires ventilation?

A. I should not think so.

Mr. McKEON.—That is all.

Mr. BOLAND.—No questions. [55]

### **Testimony of James G. Rudden, for Libellant.**

JAMES G. RUDDEN, called for the libellant, sworn.

Mr. McKEON.—Q. Mr. Rudden, have you ever sailed on the “Korea Maru”?

A. Yes, I was first officer on her.

Q. For how long?

A. I will say about three years; I don't know the exact time, but I know it is more than three years.

Q. How long have you been going to sea?

A. Twenty-four years.

Q. Mr. Rudden, what is the photograph that I

(Testimony of James G. Rudden.)

have in my hand? A. No. 5 tank.

Mr. McKEON.—This was taken in the presence of the ship's representative, if your Honor please, and I ask that it be marked "Libelant's Exhibit 1."

The COURT.—It will be admitted.

Mr. McKEON.—That photograph shows the starboard emergency escape in the No. 5 tank, or, rather, the escape on the starboard side of No. 5 tank.

Q. Captain, what is that photograph that I have in my hand? A. That is No. 5 tank.

Q. What is that steel upright?

A. An escape, an uptake.

Q. An escape, an uptake? A. Yes.

Q. Is the door facing the officer there the door that has been referred to in this matter?

A. Yes.

Q. That is the door that was testified to as having been opened to ventilate this cargo? What are these cross bars?

A. They are cargo battens; cargo is stowed up against that to prevent cargo from getting onto this bulkhead, which is hot, in order to pass a circulation of air through if there is anything down there.

Q. What is that steel bulkhead the other side of the cargo battens?

A. That is a steel bulkhead between No. 5 tank and the engine-room. [56]

Q. Is the engine-room just forward of it?

A. Yes, just forward of it.

(Testimony of James G. Rudden.)

Q. This photograph, if your Honor please, shows the escape on the left-hand side of this tank. Is that right? A. Yes.

Q. This one shows the right-hand side?

A. Yes.

Mr. McKEON.—I ask that that be marked “Libelant’s Exhibit No. 2.”

The COURT.—It will be admitted.

Mr. McKEON.—Q. I show you another photograph of the “Korea Maru,” Captain, and ask you to identify the objects that appear there in the foreground, and on the right-hand side facing it?

A. This is a continuation of these square tanks, the uptake and the escape.

Q. This top that you see there that has been referred to here as the mushroom top?

A. That is the mushroom top.

Q. These are the places where both of the emergency escapes open on to the top of the tank?

A. On to the top of the tank.

Q. I will mark that “A” and the other top to the emergency escape “B,” and the mushroom top “C.” Captain, what is that which I am pointing to, which I will mark “D”?

A. That is the ventilator leading to the port engine-room, and to the working platform.

Q. The ventilator permitting air to go to the engine-room?

A. To the engine-room, and it is trimmed according to whichever way the wind is.

Q. What does the mushroom top do?

(Testimony of James G. Rudden.)

A. It allows the hot air or foul air, if there is any down there, to escape.

Q. To go out? A. It is not a ventilator.

Q. It is not a ventilator? A. No.

Mr. McKEON.—I ask that that be marked “Libelant’s Exhibit 3.” [57]

Q. I show you another photograph, Captain, of the top of one of the emergency escapes and the top deck with the mushroom top. Can you identify it? A. Yes, there is one on each side.

Mr. McKEON.—I ask that that be marked “Libelant’s Exhibit 4.”

Q. Captain, is there any opening into that No. 5 tank other than the doors in the emergency escapes and the cargo hatch above?

A. There is not. This is all ceiled up with woods on both sides of the tank.

Q. On both sides of the fresh-water tanks?

A. On both sides of the fresh-water tanks, yes.

Q. Referring to Libelant’s Exhibit 2, showing the door that opens into No. 5 tank, is that door ever opened while the ship is at sea?

A. No, it was only opened at Hong Kong when we wanted to get into the fresh-water tanks to clean them out.

Q. What is the emergency escape constructed for?

A. If anything happens in the engine-room, it is constructed that they can come up through that escape and go out on the main deck, the deck above there.

Q. Is it ever used as a ventilator? A. No.

(Testimony of James G. Rudden.)

Q. Was it ever intended as a ventilator?

A. No.

Q. Captain, what have you to say with respect to the tanks that adjoin these fresh-water tanks, that adjoin the No. 5 tank, as to whether they contain hot water?

A. The fresh-water tanks, when we are leaving Yokohama, four of them are all filled with cold water, and on the third day out we start to evaporate water and fill it in one of these tanks; the first tank that is empty, we start to evaporate and put it into these tanks, and then it is pumped onto the bridge to a hot well to cool off and then it goes through the different levels [58] of the ship, goes to the baths, to the galley, the forecastle, etc.

Q. Has the engine-room any effect upon No. 5 tank with respect to heat? A. It certainly has.

Q. If this door appearing on the emergency escape of No. 5 of exhibit 2 were closed, Captain, would the hot air passing through it have any effect on the steel emergency escape?

A. On the four sides of it; yes.

Q. What effect would it have?

A. It would heat it.

Q. If that door appearing in Libellant's Exhibit 2 were open, Captain, on the voyage from Manila to San Francisco, as testified to by the master and first officer of this ship, what sort of air would enter No. 5 tank from those doors.

A. You would have excessive heat.

Q. What sort of air would get in there?

(Testimony of James G. Rudden.)

A. Excessive heat.

Q. What sort of air would get in there?

A. Hot air.

Q. Captain, assume that the hatch boards were down on No. 5 tank, and on top of those hatch boards cargo was stowed to the ceiling of the next deck above, the 'tween-deck, and assume that the doors in both emergency escapes were closed, would there be any ventilation in No. 5 tank?

A. None whatsoever.

Q. Would the heat of the engine-room on the floor of that No. 5 tank have any effect upon heating No. 5 tank? A. Yes.

Q. Then that tank is practically surrounded by heat?

A. It is completely surrounded by heat, except on the ship's sides.

Q. And except above? A. And except above.

Q. Have you recently tried to open those doors, Captain? A. Yes.

Q. How did they move?

A. Pretty hard to work; even this morning I tried them. [59]

Q. Do you remember trying to open them in the presence of Mr. Boland and Mr. Chapin?

A. Yes, we had to get a sharp instrument to pry them open.

Q. Do you remember going down to that vessel, the "Korea Maru," in company with Mr. Boland, Mr. Chapin, and myself? A. Yes.

Q. The ship was light then, was she not?

(Testimony of James G. Rudden.)

A. Yes.

Q. The cargo hatches were off, too, were they not? A. Yes.

Q. There was not any cargo in No. 5 tank?

A. No.

Q. The ship was not working cargo, then, either, was she? A. No.

Q. Do you remember standing off some distance in the center, from the engine-room bulkhead, and about ten feet forward of the engine-room bulkhead, and holding up your hand? A. Yes.

Q. Did you notice any heat from that engine-room bulkhead there? A. I did.

Q. Do you remember in the presence of these gentlemen asking the officer of that ship whether that door was ever open at sea? A. Yes.

Q. Do you remember the answer that he made?

A. In the negative.

Q. He said it was never open at sea?

A. Never open at sea.

Q. I speak of the door opening into the No. 5 tank from the emergency escape. Here is a blue-print, if your Honor please, of the "Korea Maru" and the "Siberia"; they are sister ships; they were owned by the Pacific Mail and sold to the T. K. K. Line, containing a cargo plan and the location of the engine-room, bunker space, etc., introduced on the deposition of the master. I don't know whether Mr. Boland is going to introduce his deposition.

Mr. BOLAND.—I presume so.

Mr. McKEON.—I do not want to introduce it, but



(Testimony of James G. Rudden.)

I want to [60] refer to this blue-print.

Mr. BOLAND.—You had better introduce it, then.

Mr. McKEON.—I am perfectly willing to have it go in, although I do not introduce it.

Q. Captain—

Mr. BOLAND.—I do not see how you can refer to it, unless you want to put it in.

Mr. McKEON.—Q. Captain, do you identify that as a blue-print of the “Korea Maru”? A. Yes.

Q. Pointing to No. 5 orlop, is that the place which has been referred to as No. 5 tank?

A. Yes.

Q. The engine-room is marked on this particular compartment, is it not? A. Yes.

Q. The cold-storage compartment that has been referred to by the witness who preceded you is not on top of the tank No. 5, is it?

A. No, it is not; there is a deck between.

Q. No. 7 orlop-deck, that has been referred to, is marked on that blue-print, is it? A. Yes.

Mr. McKEON.—I ask that that be marked “Libelant’s Exhibit 5.”

The COURT.—It will be admitted.

Mr. McKEON.—Captain, it has been referred to that there is a wooden bulkhead between the No. 5 tank and the steel bulkhead separating the engine-room from No. 5 tank.

A. No, there is no bulkhead there.

Q. It is a cargo batten?

A. It is a cargo batten.

(Testimony of James G. Rudden.)

Q. Just as that photograph shows? A. Yes.

Q. There has been no change in these man escapes since you have been on that ship? A. No.

Q. Those escapes do not run into the shaft alley, do they? A. No.

Q. Captain, is it possible to see oil pumped overboard in the [61] wake of the ship?

A. Well, it is possible, but with that ship, at the speed she moves—she moves along pretty quick, 15 knots, it is not. It is possible if she was going along slow.

Q. Captain, did you sound any of your bilges?

A. Yes.

Q. Did you use a rod? A. We used a rod, yes.

Q. Where do you usually sound your bilges?

A. There are various parts of the ship.

Q. Is there any place to sound the bilges in that ship? A. Yes.

Q. In the engine-room? A. Yes.

Q. When you sound your bilges you drop your rod, pick it up, and look at it?

A. Yes; the rod is graduated to inches, to see how much water is in the bilge.

Q. You always look at your rod? A. Yes.

Q. If there is any oil in the bilges you can see it?

A. Yes, it would be right on the rod, and would show it.

Q. Suppose, Captain, that cocoanut oil escaped from the barrels of No. 5 tank and passed out through the scuppers of No. 5 tank and on into the bilge, if soundings were taken of those bilges, would

(Testimony of James G. Rudden.)

not the person taking the sounding of those bilges have been advised of the fact that there was oil in those bilges?

A. Certainly; it would show on the rod.

The COURT.—It would show on the rod?

A. It would show on the rod, yes.

Mr. McKEON.—Q. Captain, outside of your sea experience, have you ever been in charge of the stevedoring of any particular companies in San Francisco?

A. Yes; when I was with the Pacific Mail I had charge of loading the "Korea" and discharging the "Korea."

Q. In your opinion, is that No. 5 tank a fit place to carry any cargo that requires ventilation?

A. No, it is not a fit place. [62]

Q. Is it suitable for the carriage of cocoanut oil?

A. I should say not.

Q. Captain, you recall the experience, about which you have testified a short while ago, of going down to that ship, and in the presence of these gentlemen and myself, holding your hand up to the middle of the room, or the tank, and getting heat from the steel bulkhead of the engine-room?

A. Yes.

Q. At that time the ship was not discharging cargo; and she was light, and the air was coming in through the hatches; she was not completely covered over. In comparing the heat from the engine-room at that time to when the main engine is working when the ship is at sea, what would you

(Testimony of James G. Rudden.)

say as to the comparison of the heat from the engine-room?

A. It would be more than double that heat.

Q. When the ship is at sea? A. Yes.

Mr. McKEON.—I think that is all at this time.

Cross-examination.

Mr. BOLAND.—Q. Captain, how long is it since you ceased going on the high seas?

A. Two years.

Q. You have been on shore two years?

A. I have been on shore about three years—it is not quite three years.

Q. What was your last position?

A. My last position was stevedore for the San Francisco Stevedore Company—head stevedore.

Q. Head stevedore? A. Yes.

Q. In San Francisco? A. Yes.

Q. What are you doing now?

A. I am with Captain Rinder, marine surveyor—stationed with Captain Rinder; he is a marine surveyor.

Q. Employed by him?

A. Employed by the Pacific Mail Steamship Company. [63]

Q. You are employed by the Pacific Mail?

A. Yes.

Q. Regularly? A. Monthly.

Q. How long is it since you were on the “Korea Maru”?

A. I cannot recall the year.

Mr. McKEON.—You mean the time when he visited her, or when he sailed on her?

(Testimony of James G. Rudden.)

Mr. BOLAND.—When he was employed on her.

A. I cannot tell you the exact year.

Q. Approximately; four or five years back?

A. It is worse than that; say seven years ago.

Q. How long were you on her sailing out of here?

A. I sailed on her over three years.

Q. What were your various positions?

A. Chief officer, all the time.

Q. Did you get into the engine-room quite often?

A. Quite often.

Q. When you speak of the engine-room, you are not speaking of the stoke hold? A. No.

Q. The engine-room proper? A. Yes.

Q. What portion of the engine-room is that which is immediately adjoining the No. 5 tank?

A. There are refrigerating engines there.

Q. The refrigerating engines? A. Yes.

Q. Where is the main engine?

A. The main engine is directly forward of this tank, of this No. 5 bulkhead.

Q. How far in feet, Captain?

A. I should judge not more than two or three; it is perpendicular to the bulkhead.

Q. They are below, are they?

A. The thrust recess is below that tank and just forward of the forward bulkhead is the engine.

Q. Not more than two feet?

A. That is all. [64]

Q. How far are the refrigerating engines?

A. They were in the wing, away up in the ship's side.

(Testimony of James G. Rudden.)

Q. Tell me what is the difference between the temperature of the engine-room and the outside atmosphere, ordinarily?

A. The temperature of the engine-room, in my time there, would run as high as 120.

Q. Would run as high as 120 in the engine-room?

A. Yes, 110 or 120.

Q. That would vary, would it, with the temperature outside? A. It would; yes.

Q. If the temperature outside were, say, 90, which is a reasonable temperature for Manila, is it not?

A. About that.

Q. And 90 being a reasonable temperature for Manila, what would be the relative temperature of the engine-room?

A. In Manila, 120 to 130, if she was stopped, but while she is in motion, there is a circulation of air.

Q. It would be a little cooler in motion?

A. Yes, but generally the engineers on watch stand at the ventilators most of the time.

Q. If the temperature went down to 80 outside, the temperature in the engine-room would go about 100, would it, relatively?

A. It would go more than that—it will stay there a long time.

Q. 100 to 105, approximately. Is that right?

A. About that. It is hotter when she is in port, you know.

Q. It is hotter when she is in port than when she is moving; that tends to cool the ship?

A. That does not tend to cool it all, just one

(Testimony of James G. Rudden.)

particular part where the engineer is on watch.

Q. It tends to cool the engine-room?

A. Just one portion where the engineer is on watch.

Q. Doesn't it create circulation from the thrust recess and [65] shaft alley?

A. It creates a circulation which draws all the heat away through these escapes.

Q. Isn't it rather cool in the shaft alley and thrust recess? A. No, it is not.

Q. What is the ordinary temperature there in regard to the engine-room, as warm, or warmer?

A. No, it is about the same.

Q. The temperature, you say, is hotter or about the same? A. About the same.

(An adjournment was here taken until to-morrow, March 26, 1919, at ten A. M.) [66]

Wednesday, March 26, 1919.

JAMES G. RUDDEN, cross-examination (re-summed).

Mr. BOLAND.—Q. Mr. Rudden, in your answer on direct examination to the effect that tank 5 was an improper place to stow cocoanut oil, you were assuming, I suppose, that some cocoanut oil had been stowed in that and had leaked?

A. I did not see the oil in there.

Q. You stated it was an improper place to stow cocoanut oil; in your answer you assumed that some had been stowed in there and had leaked. Isn't that a fact? A. Yes.

(Testimony of James G. Rudden.)

Q. You had been told that was a fact?

A. Yes.

Q. Now, do you know hold 7 in the same vessel?

A. Yes.

Q. That is aft of tank 5?

A. No, it is abaft of 6.

Q. 6 is between 5 and 7?      A. Yes.

Q. Will you now assume that there was substantially the same amount of leakage in certain of the same cargo of oil in hold 7 as in hold 5. How do you account for that?

A. There are many ways you can account for it.

Q. Will you do so?

A. In the first place, it may be through bad handling in hoisting or striking the hatch coamings, or bad stowage in the hold, or there might be a pressure of cargo on top of those barrels, if there was any cargo in there; I don't know whether the hold was full of oil or not, but if it was not, having heavy cargo on top.

Q. Would the question of heat have anything to do with it?      A. Not in that hold; no.

Q. That is, any oil stowed in hold 7 would not leak by reason of heat?

A. There is always more or less leakage.

Q. There is always a certain amount of leakage in cocanut [67] oil?      A. Yes.

Q. This oil goes on board in a liquid state?

A. Liquid state.

Q. In Manila?      A. In Manila.

Q. And it remains liquid part of the voyage?



(Testimony of James G. Rudden.)

A. Part of the voyage.

Q. In any event? A. In any event, yes.

Q. Assume, Mr. Rudden, that the temperature when on board at Manila was in the neighborhood of 90 degrees Fahrenheit, and that it remained between 80 and 90 for the greater portion of the voyage, would that oil solidify?

A. I don't know. I am not a chemist.

Q. You don't know? A. No.

Q. What is the liquefying point of cocoanut oil?

A. I could not tell you that; I don't know.

Q. You don't know the liquefying point?

A. No.

Q. Nor do you know the solidifying point?

A. I have only heard of it.

Q. You don't know anything about it?

A. No. I have heard it was 60, but I don't know for sure.

Q. You have heard it was 60?

A. It gets solid at 60.

Q. Where did you hear that?

A. Around the water front.

Q. Do you know anything about the effect of oil on spruce, pine barrels?

A. Nothing more than it will penetrate in to a certain extent.

Q. Penetrate to a certain extent?

A. Not through—it will not go through.

Q. You think it will not penetrate through?

A. No, I do not think so.

Q. You think, then, assuming that the barrel is

(Testimony of James G. Rudden.)

made of pine and is tight when the oil is put in liquid, and that it remains [68] liquid for the greater part of the voyage from Manila to San Francisco, that there would be no seepage through the barrels unless there was an excess heat?

A. Unless as to the points I have already told you, a careless handling or bad stowage.

Mr. McKEON.—And heat?

A. And heat, yes.

Mr. BOLAND.—I said excepting heat. Will you explain why it is that heat causes leakage?

A. Oil expands.

Q. Oil expands under heat?

A. Yes, and dries up the barrels, warps the barrels.

Q. Let us get at one point at a time: Oil expands under heat? A. Yes.

Q. How much heat causes it to expand?

A. I could not answer that question.

Q. If it liquefies at 60, what would be its relative expansion at 70? A. No, it is solid at 60.

Q. If it solidifies at 60, what is its liquefying point—the same figure, is it not? A. 60.

Q. It will start to liquefy at 60 if it is solid at 60, would it not?

A. Yes, but it would not be a total liquid.

Q. At what figure would it be a total liquid?

A. I suppose, in my estimation, about 80 or 90.

Q. 80 or 90? A. Yes.

Q. Then assume that it is a total liquid at 90, what is the rate of expansion per degree of heat

(Testimony of James G. Rudden.)

after that? A. That is too much for me.

Q. You don't know? A. No.

Q. Then your assumption, to that extent, is based upon what, that the oil expands under heat?

A. Any kind of oil will expand under heat.

Q. But you don't know what degree of heat will cause it to expand? A. No. [69]

Q. You then stated as a second part of your answer that it would cause the barrels to shrink. Why will it cause the barrels to shrink?

A. I said excessive heat would cause the barrels to shrink.

Q. These barrels that we are dealing with to-day were made of spruce—

Mr. McKEON.—California fir.

Mr. BOLAND.—California fir, pine; you must assume that they are dry before the oil is put in them.

A. Naturally they would be, or the oil would leak out, if they were not.

Q. Assume they were dry when the oil was put in them, how much additional heat is required to make them shrink some more?

A. I can't answer that.

Q. You don't know? A. No.

Q. Is it not a fact that they have been shrunk all it is possible to shrink them before the oil is put in? A. I don't know that.

Q. Wouldn't they be defective containers—wouldn't they be defective if they were not shrunk to the fullest extent when the oil was put in?

(Testimony of James G. Rudden.)

A. They must be perfect, or else the oil would leak out.

Q. In other words, when the oil is put in they are shrunk to their fullest extent, or else they are defective? A. I would not say defective.

Q. What are they if they are not shrunk to the fullest extent? A. I don't know.

Q. Your conclusion is if they are not shrunk to the fullest extent they are defective?

A. No, I would not use the word "defective," because that would be remedied by cooperage.

Q. Wouldn't it be necessary to continually remedy them by [70] cooperage if they are not shrunk to the fullest extent? Wouldn't they have to be continually tightened?

A. No, they could tighten them after the oil is in them, if they started to leak.

Q. Then if they started to leak they could be tightened by coopers? A. By coopers.

Q. If they are not thoroughly dry, wouldn't there still be shrinkage?

A. They thoroughly dry out in Manila.

Q. Isn't Manila a damp climate?

A. No—around the swamps it is.

Q. Isn't Manila damp climate? A. No.

Q. Is it a dry climate?

A. It is hot, good and warm.

Q. Isn't it a damp climate, a humid climate?

A. No, I never found it so.

Q. In July and August, isn't it a humid climate?

A. I never found it so.

(Testimony of James G. Rudden.)

Q. Now, assuming that these barrels are thoroughly dry when the oil is put in, how is it possible for there to be further shrinkage?

A. From excessive heat.

Q. What degree of heat will cause them to further shrink? A. I can't tell you that.

Q. Would 90 degrees? A. No, 90 would not.

Q. 90 would not? A. No.

Q. Would 95? A. No.

Q. Would 100? A. Over 100.

Q. You think over 100 would cause them to shrink some more? A. Yes.

Q. Do you know how these barrels are dried? Are they kiln-dried?

A. I never have seen any of them; I have not seen the barrels, and I could not say whether they are kiln-dried or not. I suppose they are. [71]

Q. You think anything over 100 would cause them to shrink some more?

A. If the temperature stays at that one stage all the time it would not, but the temperature in No. 5 hold of this vessel runs to 120 and as high as 130.

Q. In hold 5? A. In hold 5.

Q. That is in the same ratio as the temperature will vary in the engine-room? A. Yes.

Mr. McKEON.—Q. Will that hold be hotter than the engine-room at any time?

A. Yes, because the heat is retained there.

Mr. BOLAND.—What is the relative difference in heat between hold 5 and hold 7, Mr. Rudden?

A. No. 7 has ventilation, and part of this hold the ship's side is in the water, whereas No. 5 is not.

(Testimony of James G. Rudden.)

Q. That is plain, but you have not answered the question: What is the difference in the relative heat between holds 5 and 7?

Mr. McKEON.—You mean in degrees?

Mr. BOLAND.—Yes, relatively.

A. I would figure No. 7 hold would go about 65 at either side, in heat—65 to 70.

Q. It would ordinarily be 65 or 70? A. Yes.

Q. Assume that the outside air is from 80 to 90, what will the temperature of hold 7 be?

A. There is a circulation of air providing the vessel is moving.

Q. You think that the temperature in hold 7 would be less than the outside air by 15 degrees?

A. Yes—I don't know about 15 degrees; say 10 anyway.

Mr. McKEON.—It is below the water line.

A. It is below the water line, the water has an effect on it.

Mr. BOLAND.—That is all. [72]

#### Redirect Examination.

Mr. McKEON.—Q. Do you know whether or not barrels always have some moisture in them?

A. No, I could not say.

Q. You don't know? A. No.

Q. Basing your answer on your experience, do you know whether heat affects barrels?

A. Heat does affect barrels.

Q. The heat that was in No. 5 tank, would that have any effect upon any sort of a wooden barrel?

A. It would, even an oak barrel.

**Testimony of Cecil Brown, for Libelant.**

CECIL BROWN, called for the libelant, sworn.  
Mr. McKEON.—Q. Captain, are you a master mariner? A. Yes.

Q. How long have you been following the sea?

A. Twenty years.

Q. Have you also been connected with the office of inspector of hulls and boilers?

A. Yes, for ten years.

Q. What is your present occupation?

A. I am marine surveyor for the San Francisco Board of Marine Underwriters.

Q. The Board of Marine Underwriters have not anything to do with this case, have they?

A. No.

Q. As inspector of hulls and boilers, have you ever had occasion or opportunity to inspect the "Korea Maru"?

A. Yes, she was inspected annually.

Q. Recently, have you had occasion to again inspect and go through tank No. 5 of the "Korea Maru"? A. Yes, I have seen that compartment.

Q. Have you had occasion to inspect the two pipes that pass through tank 5? A. Yes.

Q. What are they called?

A. They are called uptakes, and used in the capacity of an emergency exit.

Q. An emergency exit from where?

A. From the engine-room. [73]

Q. Referring to Libelant's Exhibit No. 2, is that one of the emergency escapes?

(Testimony of Cecil Brown.)

A. Yes, that is one of them.

Q. Passing through tank 5?

A. Yes, one on each side.

Q. Is that the other one, referring to Libelant's Exhibit 1, on the opposite side of the tank?

A. Yes, that is the other one.

Q. Do you see a door, Captain, on the photograph marked Libelant's Exhibit 2?

A. Yes, there is a door in there.

Q. A door opening into the emergency escape?

A. Yes.

Q. That door appears to be closed, doesn't it, Captain? A. Yes, it does.

Q. Captain, assume that the hatch boards are on No. 5 tank and the steel door opening into the tank from the emergency escapes is closed and bolted, and cargo is stowed on top of the hatch boards to a height of 7 feet, is there any possible chance for air to get into that compartment?

A. Absolutely none; it then becomes air-tight.

Q. That door appears as though it was sealed.

A. Yes, I have never seen it open, either.

Q. You referred to uptakes, that these emergency escapes are also used as uptakes—uptakes of what?

A. An uptake is used for taking up the hot air after it has been ventilated by cold air with a ventilator.

Q. Captain, assume that the hot air was passing up through the uptake of the emergency escape, would that hot air have a tendency to heat these steel sides? A. Yes.



(Testimony of Cecil Brown.)

Q. And that heat would get into tank 5?

A. Yes.

Q. Referring to Libelant's Exhibit 3, what are those two objects marked "A" and "B"?

A. They are uptakes.

Q. Are they the top of the uptakes that pass through No. 5? A. Yes.

Q. What is that marked "C" on the same exhibit? [74] A. That is a mushroom top.

Q. On the top of these escapes?

A. On the top of these emergency escapes, and uptakes.

Q. What is that referred to as "D"?

A. That is a ventilator.

Q. On the same exhibit? A. Yes.

Q. What is the difference between a ventilator and a mushroom top?

A. A mushroom top on an uptake is permanent; it drops down over the uptake to prevent any water, rain water or sea water, from getting in; a ventilator is a cylinder in which the cowl is turned in the direction of the wind for ventilation.

Q. That is swung about?

A. That is swung about in the direction of the wind.

Q. What is the purpose of that?

A. To ventilate the interior of the ship.

Q. To take air in? A. To take air in.

Q. Referring to Libelant's Exhibit 4, Captain, is that another picture of the mushroom top of the emergency escape? A. Yes.

(Testimony of Cecil Brown.)

Q. Captain, assume that that No. 5 tank is completely enclosed, that is, the door leading from the emergency escape is closed, the only opening into it being covered with hatch boards and on top of the hatch boards cargo stowed to a height of 7 feet above, would that compartment in that condition be a suitable place for the stowage of any cargo that required ventilation? A. No.

Q. Assume the same state of facts, and the doors leading from the man escape into No. 5 tank open, what sort of air would get into No. 5 tank from those doors, cold air or hot air? A. Hot air.

Q. With that condition prevailing, would that be a suitable or proper place for the stowage of any kind of cargo that required ventilation?

A. No, sir. [75]

Mr. McKEON.—That is all.

#### Cross-examination.

Mr. BOLAND.—Q. How many years were you on ship's board? A. Twenty years.

Q. In what capacity?

A. Right up the ladder, to master.

Q. From what?

A. From a boy to master.

Q. On what vessels?

A. Both sail and steam.

Q. Why did you stop going to sea?

A. I stopped ten years ago, but I have been to sea since in the Navy; I am just ashore two months from the war.

Q. You were in the Navy? A. Yes.

(Testimony of Cecil Brown.)

Q. During the war? A. Yes.

Q. But you have been ashore for ten years?

A. I was in the United States Steamboat Inspection service.

Q. While you were in the Navy?

A. No, prior to that, while stopping ashore.

Q. What was your last command, Captain?

A. The "Major Wheeler."

Q. What tonnage? A. 5,500.

Q. Where did she sail to?

A. From here to the West Coast, and the West Coast to the East Coast.

Q. Not in the Oriental trade? A. No.

Q. Did you ever carry any cocoanut oil on board?

A. No.

Q. Did you ever carry cocoanut oil on any of your commands? A. No.

Q. Do you know anything about cocoanut oil at all? A. That is, its peculiarities, you mean?

Q. Yes. A. No.

Q. These emergency exits that you were speaking of, they are for the purpose of letting the engineers get out on deck?

A. They are demanded by the United States Government laws, [76] that they shall have an emergency escape from the engine-room in case of disaster or collision at sea; there is a ladder that runs inside of those.

Q. Where do they go out, where is the exit?

A. It goes up on the inside and comes out on the

(Testimony of Cecil Brown.)

main deck, but continues up to the promenade deck, as these exhibits show.

Q. I think you said that hold 5 would not be a place for cargo requiring ventilation? A. Yes.

Q. Do you know anything about hold 7 on the same vessel?

A. Yes, I have been more or less acquainted with the whole ship.

Q. Would hold 7 be a suitable place, do you think, for cargo requiring ventilation?

A. Yes, because it has ventilators in there leading through.

Q. What would be the difference in degrees of temperature between holds 5 and 7, in your judgment?

A. Between 5 and 7?

Q. Yes.

A. In that compartment, right in the engine-room, there, there is about 112 or 115 degrees of heat, while that vessel is under way, against about 70 or 75 in the other end of the ship, No. 7.

Q. You think that is due entirely to the presence of the engine-room?

A. That is on account of the confinement of the hot air in that particular locality of the engine-room.

Q. Assume, Captain, that the cargo coming out of hold 7 is in the same condition as the cargo coming out of hold 5 in this particular instance, how would you account for it?

A. Well, do I understand your question to be that

(Testimony of Cecil Brown.)

they are practically in the same condition?

Mr. BOLAND.—Yes.

Mr. McKEON.—With reference to what, stowage?

Mr. BOLAND.—Q. Assume that the stowage is the same in both instances, Captain—proper stowage. [77]

Mr. McKEON.—If your Honor please, I interpose an objection to that on the ground that the testimony already taken in the case shows that the stowage was not the same in the two compartments; that is the testimony on behalf of the ship itself.

The COURT.—He has a right to test the witness as an expert; if there is any dispute about whether the condition was the same or not, I cannot tell prior to hearing that other testimony, so I will overrule the objection.

Mr. McKEON.—The testimony is already in in the depositions, and there is no dispute on it at all, that the barrels in No. 7 were stowed entirely different from the barrels in No. 5.

The COURT.—I understood from counsel's questions, possibly not from any direct statement of his, that it is going to be his position that there was as much leakage in No. 7 as there was in 5. That is what I gathered.

Mr. BOLAND.—Yes.

The COURT.—If he expects that to be shown by any part of the testimony, the question is pertinent, so I will overrule the objection.

(Testimony of Cecil Brown.)

Mr. BOLAND.—I will withdraw the question and reframe it.

Q. Assume, Captain, that while the stowage was not actually identically the same, that the stowage in both instances was good in holds 5 and 7, and that the cargo came out in the same condition, how would you account for it?

Mr. McKEON.—I object to that on the ground that it does not state the conditions. Let the captain pass upon whether the stowage is good.

The COURT.—If the captain feels he can express a safe opinion on that question he can do so. The objection will [78] be overruled.

A. Well, I would like to ask if it came out in the same condition.

Mr. BOLAND.—Yes, I am assuming that in the question.

A. Well, that is a matter of stowage and a matter of handling.

Q. I am assuming, Captain, that the stowage was sufficient in both instances.

A. That is, you are assuming the stowage was absolutely correct?

Q. In both instances?

A. And you are assuming that the handling of the barrels was the same?

Q. Was the same.

A. And that these barrels actually came out in the same condition?

Q. In the same condition—how would you account for it? A. I can't see how they could.

(Testimony of Cecil Brown.)

Mr. McKEON.—That is, you don't see how they could come out in 7 the same way? A. No.

Mr. BOLAND.—That is all.

Redirect Examination.

Mr. McKEON.—Q. Damage to cargo is dependent, in a large measure, upon proper stowage, is it not? A. Absolutely.

Q. No. 5 tank is right alongside of the engine-room, isn't it? A. Yes.

Q. The steel bulkhead appearing in Libelant's Exhibit No. 2 and the cargo battens there are the only things that separate the engine-room from the cargo compartment? A. That is all.

**Testimony of W. E. Boyer, for Libelant.**

W. E. BOYER, called for the libelant, sworn.

Mr. McKEON.—Q. What is your business?

A. Exporting and importing, with Willits & Patterson.

Q. Willits & Patterson owned this consignment of oil under discussison here? A. Yes. [79]

Q. And referred to in the libel? A. Yes.

Q. Were you present at the time the "Korea Maru" came into this port with your cocoanut oil on board, or at the time it was being discharged?

A. I was.

Q. Do you remember the condition in which the cargo came out of No. 5 tank? A. I do.

Q. Will you describe it?

A. It was in very bad condition.

(Testimony of W. E. Boyer.)

Q. What condition were the barrels in?

A. Leaking very badly.

Q. What physical condition were the barrels in?

A. The hoops were off of some of them, a good many of the hoops, and the staves broken in.

Q. What effect did it have on the barrels outside of the staves being broken in and hoops off? Did it cause the barrels to shrink, or did it not?

Mr. BOLAND.—I object to the question as calling for the conclusion of the witness, without a proper foundation being laid.

Mr. McKEON.—It is a matter any man can see.

The COURT.—The objection is sustained until you qualify him in some way, as to what his experience is with barrels.

A. The barrels were leaking very badly when they came out—

Mr. BOLAND.—Just a minute. There is an objection sustained to that question.

Mr. McKEON.—There is a question before the witness.

Mr. BOLAND.—I objected to the question, and the Court sustained it.

The COURT.—I sustained the objection to the question, and I have ruled that you may qualify him further as to whether he knew anything about barrels shrinking or not.

Mr. McKEON.—Q. Did you see the barrels that came out of No. 7, Mr. Boyer? A. I did. [80]

Q. What condition were they in?

A. They were in good condition.



(Testimony of W. E. Boyer.)

Cross-examination.

Mr. BOLAND.—Q. What time did you get to the dock, Mr. Boyer?

A. When they started unloading.

Q. As soon as they started unloading?

A. Yes.

Q. And remained all the time during the unloading, did you?

A. No, I would go back and forth from the office; I was there a good deal of the time while they were unloading.

Mr. McKEON.—Have you produced the letter that I have demanded?

Mr. BOLAND.—I have not got it.

Mr. McKEON.—Then I offer in evidence a copy of a letter signed by the master of the ship, the “Korea Maru,” to Mr. T. Vaido, the agent for the Toyo Kisen Kaisha at Hong Kong. I have demanded the original of it.

Mr. BOLAND.—There is no question about the oral demand.

Mr. McKEON.—I will offer in evidence the deposition of George C. Arnold, taken on behalf of the libelant, and I assume it will be deemed read at this time.

The COURT.—Admitted.

Mr. McKEON.—It was taken on regular notice.

I offer in evidence a stipulation to the effect that it is agreed to between the respective parties to this action that the cocoanut oil which is the subject matter of the above-entitled suit, at the time

of shipment and delivery to the above-named vessel was in good order and merchantable condition, and was in liquid form.

The COURT.—Admitted.

Mr. McKEON.—I also offer in evidence a stipulation between the parties to this effect: “It is hereby stipulated and [81] agreed that upon the trial of the above-entitled action it may be deemed that the following-named witnesses have testified in the words following each of their names herein.

“It is further stipulated that for the purpose of the trial of said action the following statement of each of said witnesses shall be deemed to be his testimony:

“J. CARRERO:

“I am the senior partner of the firm of Carrero, Vidal & Co., of the City of Manila, P. I., engaged in the manufacture of cocoanut oil; that on or about the 7th day of July, 1917, said firm, for and on behalf of Willits and Patterson, loaded on board the Japanese Steamship ‘Korea Maru,’ at the City of Manila, a consignment of cocoanut oil in barrels; that said barrels when loaded and stowed on said steamship ‘Korea Maru’ were sound, tight and in good condition, and showed no leakage.

E. ALCANTARA:

“I am a custom-house broker of the City of Manila; that on or about the 7th day of July, 1917, I saw and inspected a shipment of oil in barrels in a warehouse at the port of Manila, and on board the Steamship ‘Korea Maru’; that said barrels

containing said cocoanut oil were at all times to and including the stowage thereon on said steamship, sound, tight and in good condition, and showed no leakage.

A. REYES:

“I saw the shipment of cocoanut oil on board the Japanese Steamship ‘Korea Maru’ on or about July 7, 1917. The barrels in which the cocoanut oil was loaded were sound, tight and in good condition and showed no leakage.”

HERBERT HENRY.

“This man is the only one who is an employee of Willits & Patterson. [82]

“I am an employee of the Manila Office of Willits and Patterson; that on or about the 7th day of July, 1917, I saw the barrels of cocoanut oil loaded on board the Japanese Steamship ‘Korea Maru’ at the city of Manila; that when loaded said barrels were sound, tight and in good condition, and showed no leakage.”

If your Honor please, these people are all on the other side, and to save time and expense we agreed that that testimony is to be deemed their testimony.

Mr. BOLAND.—I might say in reference to the original of that letter that counsel has shown me a copy of, I know nothing about it, but I understood from somebody that such a letter had been written, and I am assuming that that is a copy of it, of which I also know nothing.

The COURT.—It will be admitted.

Mr. McKEON.—I ask that it be admitted and marked.

That is our case, if your Honor please. I may say it has been agreed that as to the damages, if liability be determined, that will take the usual course of reference; it will be a very simple matter. The quantity shipped is admitted in the answer, and the public weighers here have weighed the oil when it came in, and it is just the difference, and the question would be the value of that. We will have no difficulty on that.

Mr. BOLAND.—I think there is no necessity for making an opening statement, as I think your Honor has gathered from my cross-examination the nature of our defense. I will first offer the three bills of lading under which this cargo was shipped, and ask that they be marked “Respondents’ ‘A,’ ‘B’ and ‘C.’ ”

The COURT.—Admitted.

Mr. BOLAND.—We will now offer the depositions that were taken on behalf of the claimant, being those of Hugh Kondo, [83] T. Ota, Y. Iijima, and Y. Yamamura, and they may be considered as read.

The COURT.—Very well, that will save time.

**Testimony of George E. Chapin, for Respondent.**

GEORGE E. CHAPIN, called for the respondent, sworn.

Mr. BOLAND.—Q. Mr. Chapin, what was your business in August, 1917?

(Testimony of George E. Chapin.)

A. Claims agent of the Toyo Kisen Kaisha.

Q. And you are still? A. Yes.

Q. Reference has been made here to a shipment of cocoanut oil on the "Korea Maru" coming into this port in August, 1917. Did you see that shipment? A. I did.

Q. What was the occasion of your seeing the shipment?

A. They telephoned from the dock that it was leaking very badly, and asked me to come down and examine it on the wharf.

Q. You did so? A. I did so.

Q. Did you examine the cocoanut oil from both hold 5 and hold 7?

A. As far as I know, it was the cocoanut oil from both holds. I examined it on the north side of the pier, outside of the sheds.

Q. Was there any difference, so far as you observed, in the oil coming from hold 5 and hold 7?

A. None at all.

The COURT.—Did I understand you saw it coming from the hold, or saw it on the dock?

Mr. BOLAND.—On the dock, he said.

Q. You did not see it coming from the hold?

A. I did not see it coming from the hold.

Q. The condition was substantially the same?

A. All down the line; yes.

Q. Some barrels were full?

A. Some barrels were full.

Q. And some empty?

A. Some empty, some partly empty. [84]

(Testimony of George E. Chapin.)

Q. Were any of the barrels broken?

A. At that time I did not see any of the barrels that were broken. The records show that one barrel was broken; all of the rest were intact, that is, they were not broken.

Mr. BOLAND.—That is all.

Cross-examination.

Mr. McKEON.—If I may introduce these weights, I will do so, Mr. Boland. These are the weighers' certificates, if your Honor please, of the weights as discharged, and I will ask that they be marked as the next exhibit for libelant.

The COURT.—They will be admitted.

(The documents are marked "Libelant's Exhibits 9, 10 and 11.")

The WITNESS.—May I ask where these discharge weights were taken?

Mr. McKEON.—Here in San Francisco.

The WITNESS.—I mean at what point.

Mr. McKEON.—They were weighed on the dock.

The COURT.—How many certificates are there?

Mr. McKEON.—There are three.

The WITNESS.—Could I look at one?

Mr. McKEON.—Yes.

The WITNESS.—They are the same date, August 20th?

Mr. BOLAND.—Yes. We have copies of them, Mr. Chapin.

Mr. McKEON.—That is all.

(A recess was here taken until two P. M.) [85]

(Testimony of William J. Murray.)

AFTERNOON SESSION.

Mr. BOLAND.—Mr. McKeon has a statement to make.

Mr. McKEON.—It is a fact that these barrels were shipped in shook form—I think that is the expression—and assembled over in Manila, and then the cocoanut oil is loaded over there and transported here.

Mr. BOLAND.—They are new barrels?

Mr. McKEON.—That is, they are new wood.

Mr. BOLAND.—And they are kiln-dried?

Mr. McKEON.—That I am not prepared to admit definitely. I do not know.

The COURT.—I understand it is not admitted that they are kiln-dried, then?

Mr. McKEON.—I don't know that to be a fact.

**Testimony of William J. Murray, for Respondent.**

WILLIAM J. MURRAY, called for the respondent, sworn.

Mr. BOLAND.—Q. What is your business, Mr. Murray? A. Marine surveyor.

Q. How long have you been such?

A. Since last November.

Q. What was your business prior to that time?

A. Port superintendent.

Q. For whom?

A. The United States Shipping Board; prior to that the American-Hawaiian Steamship Company.

Q. For how many years, Mr. Murray?

A. Covering a period of eleven years.

(Testimony of William J. Murray.)

Q. As port superintendent, what, in general, were your duties?

A. General supervision of loading and discharging.

Q. Cargo?

A. Cargo, and upkeep of ships.

Q. The American-Hawaiian Steamship Company operate what kind of vessels?

A. Large steamers. [86]

Q. Approximately what tonnage?

A. Well, anywhere from 8,000 ton 14,000 tons deadweight carrying capacity.

Q. Now, you are a professional marine surveyor?

A. Marine surveyor.

Q. Have you had any experience with cocoanut oil? A. Yes.

Q. When, and in what capacity?

A. Well, as port superintendent and as marine surveyor both, supervising the handling of it.

Q. Did the American-Hawaiian Steamship Company carry cocoanut oil on its vessels? A. No.

Q. What was your experience with it as port superintendent?

A. General observation of it along the waterfront.

Q. Have you had any experience since that time as a surveyor? A. Yes.

Q. What experience has that been?

A. On a number of vessels discharging, and one in loading.



(Testimony of William J. Murray.)

Q. What was the reason for your being interested in it?

A. I was called on by merchants representing their various interests, and ship owners representing their own interests.

Q. Could you tell us from your experience what effect, if any, oil has upon a fir or pine barrel?

Mr. McKEON.—If your Honor please, I object to the question on the ground the witness is not qualified to pass upon what the effect of oil on barrels is.

The COURT.—I think after the answers he has given he has shown more than ordinary qualifications. I think your objection will go to the weight of his testimony, and not to its admissibility.

Mr. McKEON.—May I ask one or two questions on that line?

The COURT.—Yes, you may cross-examine him.

Mr. McKEON.—Q. Are you master mariner?

A. No.

Q. Have you ever been at sea?

A. I have been at sea; yes. [87]

Q. As what? A. On various vessels.

Q. As what?

A. Merely as a passenger.

Mr. McKEON.—That is all.

Mr. BOLAND.—I can qualify him some more. Have you observed barrels of cocoanut oil being loaded and unloaded? A. I have.

Q. Have you observed them being coopered?

A. Yes.

(Testimony of William J. Murray.)

Q. Will you explain what you have seen in that connection?

A. In discharging it is necessary to re-cooper them just as soon as you get them on the wharf.

Q. Why? A. Because they are slack.

Q. When you say they are slack, will you describe that to the Court?

A. The hoops were slack, and there was seepage on a warm day.

Q. What did they do in re-coopering, Mr. Murray?

A. Our general practice is to back off the loops, wrap the barrels with burlap, sand the barrels, dry the hoops, and dog them.

Q. Why do they sand these barrels?

A. In order to give the hoop a better grab on the barrel.

Q. A friction surface?

A. A friction surface.

Q. The burlap is to wipe off the barrel?

A. Yes.

Q. What is the purpose of the dogging?

A. Hold the hoop in place after they have driven it as far as they can.

Q. Why do they do all those things?

A. Because of the tendency, on account of the presence of the oil in the stave, would be to slip.

Q. Did you observe the condition of the barrels before that was done? A. Yes.

Q. What was it? A. Greasy.

Q. Leaking?

(Testimony of William J. Murray.)

A. Stained, with a content. [88]

Q. Were they leaking?

A. Where they were exposed to the sun.

Q. After that was done, they continued to seep, did they—after all those things were done, what would still happen, if anything?

A. If they were exposed to the heat of the sun, they would still continue to seep.

Q. Prior to their doing all of those things, what was the condition of the barrels containing coconut oil?

A. When they first came out of the vessel?

Q. Yes.

A. They were stained with the contents, the hoops were slack.

Q. Would any of them be leaking?

Mr. McKEON.—That is leading and suggestive.

Mr. BOLAND.—Go on and describe the condition.

A. Where they were exposed to the heat of the sun; yes.

Q. In all this observation, did you observe and form any conclusion as to what effect, if any, coconut oil would have upon a pine barrel?

A. Well, I don't know as it is any difference in the effect on a pine barrel or hardwood barrel.

Q. What is the effect, if any?

A. The general result is there is shrinking.

Q. The oil itself, causes the shrinking?

A. The shrinking of the container.

Mr. McKEON.—I object to that as leading and suggestive, and move to strike it out. It is the

(Testimony of William J. Murray.)

answer of Mr. Boland, instead of the witness.

Mr. BOLAND.—I merely repeated it.

The COURT.—He answered in substance to that effect.

The motion is denied.

Mr. BOLAND.—Q. Did you ever notice a deck cargo of cocoanut oil?

A. I have seen cargoes discharged from the deck.  
[89]

Q. Did you or did you not notice whether there was any seepage on a deck cargo?

A. I have seen where there has been seepage on the deck.

Q. In connection with the questions I have just addressed to you regarding leakage, is there any difference between new and old barrels?

A. I would not attempt to answer that question.

Q. Are you familiar with the steamship "Korea Maru"?

A. Nothing other than a casual observer.

Q. You have been on board her, haven't you?

A. No.

Q. You have not been on board? A. No.

Q. Assume, Mr. Murray, that tank 5, so-called, is immediately abaft of the engine-room, that between it and the engine-room there is nothing but a steel bulkhead, with cargo battens, and that hold 7 is further aft, with hold 6 lying in between; that tank 5 does not go to the skin of the ship, but is flanked by water-tanks, and that hold 7 does go from skin to skin of the ship; assume that there is practically no

(Testimony of William J. Murray.)

ventilation, if any, in hold 5, and there is some slight ventilation in hold 7, and assume that cocoanut oil is loaded in both holds, and put on board at Manila in liquid state at a temperature of about 90, and the temperature varies for some days between 80 and 90, can you tell us whether it would make any difference as to the condition of that oil at the end of that voyage between the oil in hold 7 and hold 5?

Mr. McKEON.—I object to that upon the ground that it does not state the facts in evidence with reference to hold No. 7 as compared to the stowage in No. 5, the manner of the stowage, how the barrels were stowed.

Mr. BOLAND.—I will add, the stowage in each instance was good stowage. [90]

Mr. McKEON.—I object to that further on the ground that “good stowage” does not indicate in what manner the barrels were stowed in No. 5 or 7 hold, whether they were stowed on end or stowed on the side.

The COURT.—The objection will be overruled.

Mr. McKEON.—Exception.

Mr. BOLAND.—Q. Would you like to have the reporter read the question?

A. I think I have got the drift of it. You might read the question. (Question read.) I should say this, that in No. 5, that you speak of as a tank with tanks on either side between No. 5 proper and the skin of the ship, that that atmospheric temperature that the oil contained when loaded would not be affected by the radiation of sea water on the shell of

(Testimony of William J. Murray.)

the ship, the ship's hull, in No. 5 hold, as it would be in No. 7. In other words, the radiation of the sea water on the ship's hull would have a tendency to lower the temperature of No. 7, and consequently the oil that was loaded in No. 7 earlier than that stowed in No. 5.

Q. Would that have any difference in the amount of seepage of the barrels in the two holds?

A. Well, we know very well when the oil is once congealed or starts to solidify, that the seepage is less than when it is in a liquid form.

Q. Now, taking from that point, assume that upon arrival here the oil in both of the holds referred to is liquid, would it make any difference?

A. As to the seepage?

Q. Yes. A. I should not think that it would.

Mr. BOLAND.—That is all.

Cross-examination.

Mr. McKEON.—Q. Mr. Murray, what ships have you surveyed?

A. I have surveyed the "Flying Cloud," the "Billerton," the "L'Avenir," the "Itanca." [91]

Q. What was the cause of the heating in the "Flying Cloud"?

A. That is a question that I do not consider it is proper for me to answer.

The COURT.—Is it still pending? A. Yes.

Mr. McKEON.—I will withdraw the question.

The COURT.—The objection is sustained.

Mr. McKEON.—Q. The "Flying Cloud" had

(Testimony of William J. Murray.)

broken copra all around it, didn't it?

A. That is a question I am not to answer, as to the "Flying Cloud."

Q. That is only a fact.

The COURT.—That is a matter that must have been manifest, and I will require you to answer that. A. Yes.

Mr. McKEON.—So did the "L'Avenir," Mr. Murray: That is true, is it not? A. Yes.

Q. Do you know whether Copra has any heating qualities at all?

The COURT.—I will sustain the objection as to that. You can prove that by somebody else, if it is important.

Mr. McKEON.—You mentioned something about the sun having effect on barrels of cocoanut oil.

A. Yes.

Q. What is there in the sun that has an effect on it? A. Heat.

Q. Then you think that heat does affect barrels of cocoanut oil? A. Yes.

Q. How does it affect them?

A. Well, it renders them in a soluble form.

Q. What is the effect upon it when it is in that form.

A. Seepage—I am speaking now of wood containers.

Q. What effect has it on wood containers, heat?

A. The oil or the heat?

Q. The heat.

A. Well, I would be inclined to say that the com-

(Testimony of William J. Murray.)

bined effect of the heat on the oil and the barrel renders [92] it susceptible to seepage.

Q. If No. 5 tank about which you have testified was much hotter than No. 7 hold, wouldn't the leakage in No. 5 be greater because of that heat than No. 7?

A. If the temperature of No. 5 was higher than No. 7?

Q. Yes. A. I should say so.

Q. What would you say, Mr. Murray, if the temperature of No. 7 was 75, and the temperature of No. 5 was 120? A. Well, I think—

Q. (Intg.) You think you would not have any oil inside at all?

A. No, not exactly; I think your oil would be of a lighter consistency.

Q. You would have greater leakage, wouldn't you?

A. You would have a leakage where the consistency is lighter.

Q. You would have a leakage where you find the hottest place, wouldn't you, a greater leakage?

A. With the condition of the oil, the oil being in a soluble form, yes.

Q. Assume, Mr. Murray, that the oil in No. 7 and in 5 tank are in liquid form, and you have the greatest quantity of heat in No. 5 tank. Isn't there bound to be more leakage in No. 5 than in No. 7?

A. Naturally, you would expect some.

Q. Don't you always re-cooper barrels after they are handled?



(Testimony of William J. Murray.)

A. Particularly with a nonviscous oil.

Q. But you always re-cooper barrels after being handled with cargo, don't you?

A. With a nonviscous oil, yes.

Q. What do you mean by a "nonviscous oil?"

A. Lacking the sticky propensities and qualities that a lubricating oil, for instance, will have; it makes it more susceptible to seepage, flow.

Mr. McKEON.—I think that is all. [93]

Redirect Examination.

Mr. BOLAND.—Q. You used the word "soluble," Mr. Murray. I presume you meant liquid—soluble means that it could be dissolved in some liquid—you mean liquid?

A. Yes.

Mr. McKEON.—Q. When did you commence to be a marine surveyor?

A. Last November.

Q. 1918? A. 1918.

**Testimony of Lebeus Curtis for Respondent.**

LEBEUS CURTIS, called for the respondent, sworn.

Mr. BOLAND.—Q. What is your business?

A. Marine surveyor.

Q. How long have you been such?

A. Since 1912.

Q. By whom, in general, are you employed?

A. Shipowners, underwriters, shippers of cargo.

Q. What was your business before that?

(Testimony of Lebeus Curtis.)

A. As a shipmaster.

Q. For how many years, Captain?

A. Approximately six years shipmaster.

Q. Went to sea? A. Yes.

Q. What concern did you sail for?

A. As a ship master I sailed for the Union Oil last.

Q. The Union Oil Company last? A. Yes.

Q. On what vessel?

A. On the steamer "Santa Maria," "Santa Rita," the "Hectan," "Argyle," "Roamer."

Q. Did you ever have any experience loading and discharging cargo? A. Yes, a great deal.

Q. What was that as?

A. That was as a chief officer and second officer in the American Hawaiian Steamship Company, and various other companies carrying general merchandise.

Q. Have you had any experience with cocoanut oil?

A. In the past two or three years I have had a lot of experience with it.

Q. Did you have any prior to that time?

A. No. [94]

Q. Only the last two or three years?

A. Only the last two or three years.

Q. What experience, will you describe generally, have you had in the last two or three years to qualify yourself?

A. I have been acting as a surveyor on perhaps seven or eight cargoes of cocoanut oil in wooden

(Testimony of Lebeus Curtis.)

barrels that have been discharged at this port.

Q. You made an investigation of its condition, and its effect upon the barrels, and so on, did you?

A. Yes.

Q. In that connection? A. Yes.

Q. You are at the present time engaged upon some of the vessels that have been referred to here in the testimony, have you? A. Yes.

Q. Have you formed any opinion, by reason of your experience, of the effect, if any, of cocoanut oil upon a pine barrel?

A. Yes, I have formed the opinion that cocoanut oil shrinks pine barrels.

Q. When it is in liquid form?

A. When it is in liquid form, yes.

Q. In liquid form, do you find there is always some seepage? A. Always, yes.

Q. Are you familiar with the steamship "Korea Maru"? A. Yes.

Q. Before we get to that, have you ever seen any seepage of cocoanut oil in pine barrels in an on-deck cargo?

A. Yes, I saw two cargoes that arrived at this port on the steamer "Colusa," stowed on deck; in both cases, there was considerable seepage.

Q. Now, getting back again to your experience and observation as to shrinkage by reason of oil being in liquid form, does it make any difference, in your judgment, between new and old barrels?

A. I don't think I know positively whether the barrels I have seen have been new or old. [95]

(Testimony of Lebeus Curtis.)

Q. Have you come to any conclusion on that subject at all that you feel sufficiently informed upon to announce? A. I have come to a conclusion.

Mr. McKEON.—I will not admit his qualifications on that subject, if your Honor please, and for that reason I object to it.

The COURT.—The objection is sustained.

Mr. BOLAND.—Q. You say you do know the “Korea Maru”?

A. Yes.

Q. Do you know the location of the so-called tank 5? A. Yes.

Q. And the so-called hold 7? A. Yes.

Q. Would there be any difference as to the seepage or leakage of cocoanut oil, liquid cocoanut oil, in pine barrels, as between the two holds?

Mr. McKEON.—Assuming that they are stowed the same?

Mr. BOLAND.—Assuming that there is good stowage in each instance, that any leakage does not occur by reason of bad stowage.

A. There might be a difference, of more leakage in No. 5, if the temperature is very much higher in it than it was in 7.

The COURT.—Did you say yes, or if it was?

A. If it was very much higher.

Mr. BOLAND.—Q. Would there be any appreciable difference? A. I would not think so.

The COURT.—You would or would not?

A. I would not; if the containers were sufficient to carry liquid cargo, I do not think there would be

(Testimony of Lebeus Curtis.)

any difference, if they were all good containers.

Mr. BOLAND.—Q. Assume that some of the oil from either or both of these holds escapes and goes into the scuppers, and from there into the bilges, would it be possible, during the [96] voyage to save any of that oil that would thus get into the bilges?

Mr. McKEON.—Just a minute. Captain, have you ever been in the engine-room of the “Korea Maru”?

A. No.

Mr. McKEON.—For that reason I interpose an objection upon the ground the witness is not qualified. He says he has not been down in the engine-room.

The COURT.—The objection is sustained.

Mr. BOLAND.—You don’t know about the location of the bilges in the “Korea Maru”?

A. I know the general location of the bilges, but I am not familiar with the bilge connections and suction, the pipe arrangement.

Q. You don’t know whether there would be any chance of saving the oil, or not?

Mr. McKEON.—I again interpose the objection, if your Honor please, that the witness is not familiar with the construction of the lower portion of that ship.

The COURT.—He is asking whether he knows or not. The objection is overruled.

A. No, I don’t know positively.

Mr. BOLAND.—That is all.

(Testimony of Lebeus Curtis.)

Cross-examination.

Mr. McKEON.—Q. Captain, you are the marine surveyor for the T. K. K. Line, aren't you?

A. I am employed by them at times.

Q. You do all of their work, don't you?

A. Not all of it.

Q. Not all of it?     A. No.

Q. Every time it is possible to get you, you are in their employ, aren't you, Captain?

A. I think so.

Q. And it is only in those cases, when you are on the other side of the fence, that you are not employed by the T. K. K.? [97]

A. No; they frequently employ Captain Wallace, if I am not available, if I am out of town, or something of that sort.

Q. The vessels that you mentioned that you have been master of are all oil-tankers, are they not?

A. Yes.

Q. They are not general cargo ships?     A. No.

Q. That is where all of your experience as a master mariner has been?     A. As a master, yes.

Q. Do you think heat has any effect on cocoanut oil in barrels, Captain?     A. Yes.

Q. Are you familiar with No. 5 tank of the "Korea"?     A. Yes.

Q. When did you examine it?

A. Day before yesterday.

Q. Referring to Libelant's Exhibit No. 2, is that the tank?

A. It looks like a picture of a portion of it.

(Testimony of Lebeus Curtis.)

Q. What is that upright there?

A. That is the ventilator or escape from the shaft recess to the upper deck.

Q. Has it any opening into No. 5 tank other than that door you see there? A. No.

Q. Referring to Libellant's Exhibit No. 3, that is the top of that emergency escape, is it not?

A. Yes.

Q. Is that top constructed as a ventilator?

A. As an uptake ventilator.

Q. It does not take any air in? A. No.

Q. Assuming, Captain, that that No. 5 tank had the cargo hatches on top and cargo stowed seven feet on top of that to the ceiling of the 'tween-decks, and these doors opening out from the emergency escapes were closed, would that compartment get a bit of ventilation? A. No, not at all.

Q. That tank is right directly abaft the engine-room, isn't it? A. Yes.

Q. Would the heat of the engine-room have any effect on that tank? A. Oh, yes. [98]

Q. What effect would it have on that tank?

A. It would make it warmer.

Q. There is not any engine-room alongside of No. 7, is there?

A. No; there is a shaft alley through there, two shaft alleys.

Q. Through where?

A. Through the bottom of No. 7 hold; they connect directly with the engine-room.

Q. What is the purpose of the shaft alley?

(Testimony of Lebeus Curtis.)

A. It is the alley that the shaft from the engine to the propeller runs in.

Q. All the ventilators open into the shaft alley, or pretty nearly all the ventilators open into the shaft alley? A. No, not all of them.

Q. The shaft alley is a pretty cool place?

A. Yes.

Mr. McKEON.—I think that is all, Captain.

The COURT.—Is the engine-room forward or aft of No. 5?

Mr. McKEON.—It is directly forward, if your Honor please.

The COURT.—That is the impression I got.

Mr. McKEON.—Right alongside of it.

### **Testimony of R. E. Sanborn, for Respondent.**

R. E. SANBORN, called for the respondent, sworn.

The COURT.—Does the shaft alley run under No. 5, or through No. 5?

Mr. McKEON.—It does not run under No. 5 or through No. 5.

The COURT.—Then if the engine is forward of No. 5, how does the shaft connect up with the engine?

Mr. McKEON.—The shaft alley does not connect up with the engine; it opens into the engine-room.

The COURT.—The only thing I had in mind is, are you both agreed that the shaft alley does not run through No. 5?

Mr. BOLAND.—No, we are not agreed.



(Testimony of R. E. Sanborn.)

Mr. McKEON.—There is a witness here who knows the ship [99] from A to Z; you can put him on the stand.

The COURT.—Your position is that owing to the fact that these water tanks were outside of No. 5—

Mr. McKEON.—The water tanks are on both sides of No. 5, your Honor.

The COURT.—The thought simply came into my mind; however, you are trying the case.

Mr. McKEON.—I will convince your Honor of that with a witness here.

Mr. BOLAND.—Q. Mr. Sanborn, what is your occupation or profession? A. Chemist.

Q. You are a graduate chemist? A. I am.

Q. From what university?

A. Stanford University.

Q. How long ago? A. I graduated in 1911.

Q. And your business since?

A. I have been employed in various chemical laboratories since that time.

Q. You are what would be called a commercial chemist? A. Yes.

Q. Your present employment is what?

A. Chief chemist for Gould & Nash.

Q. Have you had any experience, in your chemical profession, with cocoanut oil? A. I have.

Q. And cocoanut oil in pine containers, pine barrels as well?

A. Well, in barrels of various kinds; I have no doubt pine barrels were among them.

(Testimony of R. E. Sanborn.)

Q. You have heard the testimony here this afternoon? A. I have.

Q. You have heard the testimony that oil containers shrink, wooden barrels, pine barrels?

A. I have.

Q. From your chemical experience, Mr. Sanborn, can you give us any information as to why that could occur, if it does occur?

A. All barrels in a commercial condition, so to speak, that is, as they would be met with in commerce, have more or less water [100] in the wood fibre, and water in contact with cellular material of all kinds tends to swell it; there is a *quasi*-chemical combination takes place there, so that the volume of the whole is much greater than the sum of the volumes of water and wood separately; that combination does not take place in the case of oil, and consequently when the water of a wood is driven out by one cause or another and is replaced by oil, there will be shrinkage. In other words, the sum of the volume of the oil and the volume of the wood would practically represent the volume of the two in combination.

Q. And there is an apparent shrinkage?

A. Yes.

Q. Does the oil, itself, tend to drive the water out? You spoke of driving the water out of the wood by one means or another. Does the oil, itself, tend to do that?

A. Yes, there is a tendency, if the wood is not properly protected, for the oil to penetrate into the

(Testimony of R. E. Sanborn.)

wood and for the water which may escape as a vapor at the surface to be driven out.

Q. At what point of temperature does cocoanut oil solidify?

A. As we define solidification as the temperature at which a solid does not flow, a mass is formed at about 65 degrees, Fahrenheit; that varies within narrow limits, two or three degrees, for cocoanut oils from different sources.

Q. What is the liquefying point, if it is any different from the solidifying point?

A. The liquefying point, as defined as the point at which the oil becomes a clear liquid is approximately ten degrees higher.

Q. About 75 degrees? A. Yes.

Q. There is then a difference of ten degrees at which the oil would solidify or liquefy, depending upon whether the temperature was going up or down?

A. At which the oil would be more or less of a mushy mass, you might describe it. [101]

Q. In other words, if oil were liquid at, say, 80 degrees, and the temperature were going down it would become congealed or coagulated—which would you call it? A. Congealed.

Q. (Continuing.) At 75, and become a solid at 65?

A. Yes, to use different temperatures for illustration, as I said the temperature varies slightly.

Q. On the other hand, if the temperature were going up, it would be solid at 65 and gradually

(Testimony of R. E. Sanborn.)

liquefy until it were a clear liquid at 75?      A. Yes.

Q. Will you tell us, Mr. Sanborn, what expansion there is in cocoanut oil, liquid cocoanut oil, in a rising temperature? You can illustrate your answer if you care to.

A. There is an expansion of approximately .02 of 1 per cent for every degree of rise in temperature.

Q. Can you tell us in our language how much that would be in the rise of temperature in say 80 and 110 degrees?

A. It would amount to about .1 of 1 per cent; in other words, about .05 of a gallon to a barrel of oil, assuming a 50-gallon barrel—they will vary in sizes.

The COURT.—You said .02 of 1 per cent in every degree of rise in temperature?      A. Yes.

Q. That would be 30 times?

A. I understood you to say 80 to 100, which would be 20 times; but it is merely a matter of calculation.

Mr. BOLAND.—That is all.

#### Cross-examination.

Mr. McKEON.—Q. If the interior of the barrels is glued, they are protected, somewhat, are they not?  
[102]

Mr. BOLAND.—I object to the question on the ground it is not apparent that there was any glue inside these barrels, so far.

The COURT.—This man is an expert, and they have a right to test him.

(Testimony of R. E. Sanborn.)

Mr. BOLAND.—I will withdraw the objection.

Mr. McKEON.—Read the question.

(Question repeated by the reporter.)

A. Yes, they are protected somewhat.

Q. I believe you said that heat affected cocoanut oil in barrels, didn't you?

A. I don't know that I said it, but it does.

Q. And the hotter it gets, the more effect it has; isn't that so? A. Effect is a broad term.

Q. The more opportunity there is for the leakage.

Mr. BOLAND.—I object to the question as being too indefinite.

The COURT.—The objection is overruled.

A. The higher the temperature the lower would be the viscosity, or, conversely, the higher would be the fluidity of the oil, and consequently the greater would be the rate of flow through a given orifice.

Mr. McKEON.—That is all.

Mr. BOLAND.—That is all.

**Testimony of James McCarthy, for Respondent.**

JAMES McCARTHY, called for the respondent, sworn.

Mr. BOLAND.—Q. What is your business, Mr. McCarthy? A. Foreman stevedore.

Q. Where? A. Now for the T. K. K.

Q. What were you doing in August, or thereabouts, 1917?

A. I was foreman for Mr. Dunn. [103]

Q. What were you doing at that time?

A. Foreman sorter.

Q. At that time, in August, or thereabouts, 1917,

(Testimony of James McCarthy.)

were you working on the T. K. K. dock?

A. Yes.

Q. Employed by whom?      A. By Mr. Dunn.

Q. Do you remember a shipment of cocoanut oil on the "Korea Maru" about that time?      A. I do.

Q. In tank 5 and hold 7?      A. Yes.

Q. Did you see that come out of the hold?

A. I did.

Q. Where was it put on the dock?

A. Well, some was put on the north and some on the south side; No. 7 hatch was put on the north side of the dock, and No. 5 hatch, some put on the south side and some put on the north side.

Q. Put on together with the No. 7?

A. With the No. 7, yes.

Q. What was the condition of the oil as it came out?      A. It was in very bad condition.

Q. Out of 5, was it?

A. Yes, out of both hatches, in bad condition.

Q. Out of 7, too?      A. Yes.

Q. The same condition, practically?

A. Practically the same condition, hoops loose, hoops off the barrel, barrels empty.

Q. Some of them empty?

A. Some of them empty, some of them partly empty.

Q. Did you see any broken barrels?

A. I did not notice any broken barrels at all.

Q. Loose hoops?      A. Loose hoops, yes.

Q. How long have you been a stevedore?

A. About 20 years.

(Testimony of James McCarthy.)

Q. Working where?

A. Well, I worked for the Pacific Mail for 13 years—about 15 years, and 5 years for Dunn and the T. K. K.

Q. Did you ever see cocoanut oil unloaded before?

A. I did with the Pacific Mail. [104]

Q. Did you ever see a perfect shipment?

A. No. I saw one shipment come out of one of the Pacific Mail boats as bad as this shipment, every bit as bad, and every other shipment there was more or less leakage.

Q. What do they do when it comes out?

A. Put it on the dock, and as a general rule they get coopers and re-cooper it.

Mr. BOLAND.—That is all.

Cross-examination.

Mr. McKEON.—Q. Are there any tracks on the north side of the dock?

A. No; the tracks are in the middle of the dock.

Q. How many barrels came out of No. 7?

A. I don't really remember; there was more coming out of No. 7 than out of No. 5.

Q. You are sure of that, are you? A. Yes.

Q. You are just as certain of that fact as that they both came out in the same condition?

A. I think I am pretty near certain of that, that more came out of 7 than out of 5.

Q. Did you keep any tally?

A. No, we never count the barrels.

Q. Did you take any markings of these barrels?

(Testimony of James McCarthy.)

A. How do you mean?

Q. Any written record of the barrels as they came out? A. I think I did.

Mr. McKEON.—I demand the production of those records, if your Honor please.

A. I am not positive whether I did or not, but as a general rule we do take records of it.

Mr. McKEON.—I demand the production of the records, showing what came out of No. 7 and what came out of No. 5.

A. We do not make any record of how many barrels come out of 7 and how many out of 5; we don't keep a record of that; we only keep a record of the condition of the barrels.

Mr. McKEON.—I want that record.

The COURT.—This witness was employed by an independent [105] company?

Mr. BOLAND.—He was at the time; he was in the employ of Dunn.

The COURT.—Is this data in any way under your control?

Mr. BOLAND.—It is not. There is a list of the barrels as they were delivered to the consignee, and their condition; I think Mr. McKeon has a copy of that.

The COURT.—You will have to show in some way it is in the control of the respondent before I can order it done.

Mr. McKEON.—If your Honor please, this witness was in the employ of the contractor who was in the employ of the T. K. K. Line discharging this



(Testimony of James McCarthy.)

cargo, and this witness has been continuously in the employ for the last several years of the T. K. K. Line. Isn't that the fact, Mr. McCarthy?

A. Yes.

Mr. McKEON.—The mere fact that a contractor was discharging T. K. K. ships does not put beyond their control the written evidence.

The COURT.—You will have to show where it is.

Mr. BOLAND.—If there is any record, I will be glad to produce it; I have given and will give Mr. McKeon access to everything we have. We will cause a search to be made for any records in that respect that we may have. But I do not believe any exists, as a matter of fact.

Mr. McKEON.—You are in the employ of the T. K. K. Line now, aren't you? A. Yes.

Q. What are your duties on the dock?

A. Head sorter.

Q. Just what does that mean?

A. That is looking after the cargo coming out of the ships, to see that it is properly put in places on the dock.

Q. You are all over the dock, I suppose?

A. Yes, all over the dock. [106]

Q. You are not confined to any particular hatch?

A. No; all over the dock.

Q. You are not at No. 5 hatch for any particular length of time, or at No. 7 hatch any particular length of time?

A. I am at one end of the ship to the other, but

(Testimony of James McCarthy.)

any damaged goods come out of the ship they notify me.

Q. How long is the ship?

A. I suppose about 600 feet.

Q. Do you sort the barrels after they get on the dock?     A. Yes.

**Testimony of William J. Barry, for Respondent.**

WILLIAM J. BARRY, called for the respondent, sworn.

Mr. BOLAND.—Q. What is your business?

A. Stevedore.

Q. Where?

A. With the T. K. K. at the present time.

Q. Employed by them?     A. Yes.

Q. At the dock?     A. Yes.

Q. Where were you employed in August, 1917?

A. I was employed on Pier 34.

Q. Who by?

A. By William Dunn, the contractor.

Q. Working on T. K. K. work at that time, weren't you?     A. Yes.

Q. Under Dunn?     A. Yes.

Q. Do you remember a shipment of cocoanut oil on the "Korea Maru" in August—about August, 1917?     A. I do.

Q. What was your business at that time?

A. I was tending to the sorting at the after-end of the steamer, sorting cargo.

Q. Did you see any of these barrels as they came out of the hold?     A. Yes.

(Testimony of William J. Barry.)

Q. What holds were they in?

A. No. 5 and 7,—5 tank and 7 hold.

Q. What was the condition of the barrels that came out of No. 5?

A. They were pretty near the same as No. 7, all leaking.

Q. All leaking? A. Yes. [107]

Q. Some empty? A. Some empty, yes.

Q. And some full?

A. Some full; the hoops were loose on them; we used to hammer the hoops down with our hooks.

Mr. McKEON.—I might suggest that the witness be permitted to testify.

Mr. BOLAND.—Q. Where were they placed on the dock, do you remember?

A. Part of them were placed on the south side, and two-thirds of them placed on the north side, that is, to keep them away from the sun, placing them on the north side of the dock,

Q. Some were placed on the south side?

A. Yes, but two-thirds of the consignment on the north side.

Q. Were any of the barrels broken, Mr. Barry?

A. Not that I could see.

Q. Your opinion is they were about the same?

A. Yes.

Q. From the two holds?

A. Yes, from the two holds; all on the north side of the dock it was covered with cocoanut oil, running down to the bay, where the barrels were leaking, the whole end of the wharf.

(Testimony of William J. Barry.)

Mr. McKEON.—I move to strike out the answer of the witness as expressing his opinion and not the fact. I did not want to interrupt him.

Mr. BOLAND.—Let that be stricken out.

The COURT.—It will be stricken out.

Mr. BOLAND.—Q. Is it a fact, or is it not a fact that the barrels of oil that came out of hold 7 and the barrels of oil that came out of hold 5 were the same?

Mr. McKEON.—I object to that on the ground it calls for the conclusion of the witness. Let him describe the barrels.

The COURT.—The objection is overruled.

Mr. BOLAND.—I will withdraw the question. He has already [108] testified as to that. It is only repetition. Take the witness.

#### Cross-examination.

Mr. McKEON.—Q. You were also sorting on the dock? A. Yes.

Q. You were not up on the ship? A. No.

Q. You assorted the cargo after it got on the dock? A. On the wharf; yes.

Q. You were not stationed at any particular hatch?

A. No; no particular hatch; at the after end of the steamer I was stationed, where the oil came out of it.

Q. You are still in the employ of the T. K. K., are you? A. Yes.

Q. You have been continuously, haven't you?

A. Yes.

(Testimony of William J. Barry.)

Q. You are one of their regular stevedores?

A. Yes.

Q. When did you first talk to anyone about your testimony to be given to-day?

A. The first time anybody spoke to me was last Monday.

Q. Last Monday? A. Yes.

Q. The 24th of March? A. Yes.

Q. Who spoke to you? A. Mr. McCarthy.

Q. What proportion of the barrels that you assorted came out of No. 5, if you did assort any, were leaking? A. No. 5 and 7?

Q. No. 5.

A. There was not much difference in any hold.

Q. What proportion of the barrels that came out of No. 5 were leaking?

A. Well, you took a general exception to all of them.

Q. To all of them?

A. Yes, all of them; you took an exception to the condition of the barrels, they were all leaking, more or less.

Q. They were actually dripping as they were pulled out of the hold, weren't they?

A. Yes, two-thirds of the side of the dock was covered with oil that leaked from these barrels.

Q. I am talking about No. 5 now.

A. This would take in both.

Q. I am talking about 5; just forget about No. 7 for a minute. [109] You say that all of the barrels that came out of No. 5 were leaking?

(Testimony of William J. Barry.)

A. More or less leaking, yes.

Q. How many barrels came out of No. 5?

A. That I could not say; I kept no record of how many came out of that hatch; we never do.

Q. What percentage of barrels that came out of No. 7 were leaking?

A. Well, pretty near the same.

Q. Pretty near the same?

A. The same as No. 5.

Q. What do you mean by "pretty near"—not quite? A. Looking in the same condition, about.

Q. They had hoops off?

A. Yes, hoops loose, and some barrels empty.

Q. The oil just came streaming out of them?

A. Yes, all over the wharf.

Q. How many barrels came out of No. 7?

A. That I don't know; I kept no record of it.

Q. What proportion of the whole shipment of barrels came out of No. 7? A. That I could not say,

Q. Was there a greater quantity that came out of No. 7 than No. 5, or *vice versa*?

A. There might be more in No. 5; that I am not positive of; I would not say positively.

Q. There were more in 5?

A. I would not say positively.

Q. You don't know what proportion of the whole shipment came out of either place? A. No.

Q. Would you say that the greatest quantity came out of 7 rather than out of 5?

A. That there was more barrels come out of 7 than 5?

(Testimony of William J. Barry.)

Q. Yes.

A. I have already said I couldn't answer that question.

Q. You don't know? A. I don't know.

Q. Your recollection is not very good?

A. My recollection is very good in regard to that work. [110]

Mr. McKEON.—That is all.

**Testimony of James Gibson, for Respondent.**

JAMES GIBSON, called for the respondent, sworn.

Mr. BOLAND.—Q. Mr. Gibson, what is your business? A. Stevedore.

Q. Where, now? A. T. K. K.

Q. What were you doing in 1917, in August?

A. Stevedoring for W. T. Dunn.

Q. He was the contracting stevedore for the T. K. K. at the same time? A. He was at the time.

Q. What capacity did you occupy with Dunn?

A. Foreman stevedore.

Q. Do you recall a shipment of cocoanut oil on the "Korea Maru" in August, 1917?

A. I do, very well.

Q. Did you see it? A. I did.

Q. Where was it stowed?

A. No. 5 and No. 77—No. 5 tank and No. 7 hold.

Q. Did you see some of it come out of those two holds? A. I certainly did.

Q. What was the condition of that in hold 5?

A. It was all bad; we had to hoist it in net slings.

(Testimony of James Gibson.)

Q. What was the condition of that in No. 5?

A. It was all the same, so bad we had to hoist it in net slings, couldn't hoist it in rope slings, because it would slip out.

Q. Did you see any broken barrels?      A. No.

Q. Just leaking?      A. Yes.

Cross-examination.

Mr. McKEON.—Q. The condition of these barrels in No. 7 was so bad that anybody who had a chance of seeing them could not mistake saying they were all in bad condition? [111]

A. We hoisted them all out in net slings.

Q. That is not my question.

A. It is quite a while ago to remember back.

Q. When did you first start to talk about it?

A. Monday of this week; in fact, until they called me I had forgotten all about the thing, until I was ordered up here for the trial.

Q. When did you first speak about it?

A. I think last week some time, when I was ordered up here.

Q. Who ordered you?      A. I forget now.

Q. Who had spoken to you about it?

A. Nobody spoke to me about it. I was told to appear up here.

Q. You have not talked to Mr. Boland about it?

A. Who?

Q. Mr. Boland, this gentleman here.

A. No, I don't know him.

Q. You have not talked to Mr. Chapin about it?



(Testimony of James Gibson.)

A. I forget who it was that told me; somebody told me I had to appear here.

Q. I will now repeat the question I asked a moment ago, that the condition of the barrels that came out of No. 7 was so bad that anyone seeing them could not mistake saying they were in bad condition, could they? A. We hoisted them out in nets.

Q. What has that got to do with the condition?

A. The condition has this to do, that we could not hoist them out with rope slings, because they would slip out, they were so bad.

Q. Was the condition of the barrels in No. 7 so bad that anyone there could not mistake saying they were in bad condition?

A. I could not tell you that. I am just telling you how we hoisted them out in net slings.

Q. Do you remember anything except the nets?

A. I remember that we put No. 5 on the south side and No. 7 on the north side, until we got the dock filled up on the south side, and then we put some of No. 5 on the north side.

Q. You remember the net, and you remember putting some on the [112] north side and south side. Now, do you remember anything else?

A. It is so long ago, it is a year ago in August, and I never gave thê thing another thought after that.

Q. From what you saw of No. 5 would you say that anyone who saw No. 5 could not mistake saying that they were in bad condition?

A. Well, I will tell you about No. 5.

(Testimony of James Gibson.)

Q. (Intg.) I should have said No. 7.

A. The man who had charge of the after end of the hold, he had his leg broken the last time the "Tenyo Maru" was in, and he probably could tell you more than I could about it, because I am up and down the dock, and I did not pay any particular attention to any hatch at the time, only that I know about the condition of this oil.

Q. You were all up and down?

A. I am all up and down.

Q. You are general overseer?

A. General overseer.

Q. Watching all the cargo that comes out, general cargo? A. Watch all the cargo.

Q. After the cargo got on the dock, did you pay any further attention to it?

A. This much, that Mr. Roberts told me he thought it congealed just as soon as cool air would reach it, and it happened to be in the hot sun at the time, and I noticed it ran for quite a while, I guess until evening came along and it got cool.

Q. Heat has some effect on it, has it?

A. You can't prove that by me. I don't know a thing technically about this thing at all.

Q. As a matter of fact, some of these barrels were in good condition, weren't they?

A. I don't know anything about those barrels. I have been told that they go out there in a knocked down condition.

Q. You were told that?

A. In fact I have seen them go out [113] in a

(Testimony of James Gibson.)

knocked down condition, and they are supposed to come back with oil in.

Q. Do you know whether any of these barrels were in good condition?

A. I don't know anything about it. I simply know that I discharged the cargo, and when I discharged it I discharged it in net slings, it was all in bad condition, and that is all I know.

Q. Do you know how many barrels came out of No. 7?

A. No; I could not tell you accurately; I think there was one-third in one hatch and two-thirds in the other.

Q. But you don't know how it was divided, how much in 5 and how much in 7?

A. I could not say for sure, but I think there was a shipment of something like 520, or 500 and something, like that.

Q. You don't know how it was divided between 5 and 7?

A. No, I could not tell you right now, because I never gave the thing a thought; but I think that was the shipment, somewhere around 500.

The COURT.—Isn't there a loading record somewhere of the amount that went in?

The WITNESS.—There ought to be something.

Mr. BOLAND.—As a matter of fact, we know about the proportion of the different hatches; Mr. McKeon knows.

Mr. McKEON.—I know the number that was in each.

(Testimony of James Gibson.)

Mr. BOLAND.—But this man does not know.

A. It is my business there to get freight out and freight in; I don't pay any particular attention to that.

Mr. McKEON.—Q. How many barrels in the total shipment were damaged?

A. I could not tell you that; I don't know; all I know it was all running out, and we, in fact, threw a lot of light barrels on top on both the north and south sides. [114]

Q. Were they all damaged?

A. I am telling you, it is a long time ago and I cannot particularly remember it. The only thing I remember is we hoisted them out in net slings from both hatches.

Q. Do you know the names of any other stevedores that were in No. 7 hold?

A. Well, I might try to find them out.

Q. You don't remember?

A. Not offhand; no.

Q. You are in the employ of the T. K. K., still, aren't you? A. Yes.

Mr. BOLAND.—With the exception of one other witness, your Honor, that is our case; the only remaining question is the inference that might be drawn from some of the questions asked the witnesses as to the possibility of separating any oil from bilge water in the bilges during the voyage; I really did not appreciate that that might not be suggested, and we have asked one of the engineers on the vessel who is there now to come out here,

(Testimony of James Gibson.)

but I do not know what time he will get here.

The COURT.—That is as far as that testimony will go?

Mr. BOLAND.—Yes, the only point of this is to show it would be impossible during the voyage to separate it in the bilges, that the bilges have to be pumped, and continuously pumped, and it is practically an impossibility to separate it until they come to the end of the voyage, and then it hardens and they take it out, and some was taken out; but otherwise it was impossible.

The COURT.—Are you ready to proceed with your rebuttal?

Mr. McKEON.—Yes. [115]

**Testimony of W. F. Broderick, for Libelant (In-Rebuttal).**

W. F. BRODERICK, called for the libelant in rebuttal, sworn.

Mr. McKEON.—Q. Mr. Broderick, what is your business?

A. I am a salesman for the California Barrel Company.

Q. The barrels that you manufacture are constructed of what?

A. We make barrels of different materials; we make oak barrels, we make barrels of Douglas fir, we make barrels of spruce.

Q. Do you recall the type of barrels that you have been selling to Willits & Patterson?

A. I think we have been selling the Douglas fir

(Testimony of W. F. Broderick.)

barrels to Willits & Patterson; we might have sold them some oak barrels, also; that I am not sure of.

Q. Mr. Broderick, has heat any effect upon a barrel? A. Yes.

Q. On any kind of a barrel? A. Yes.

Q. What effect has it?

Mr. BOLAND.—If your Honor please, I object upon the ground that this is not rebuttal testimony. This would be a part of their opening case, and not in the nature of rebuttal.

The COURT.—I will overrule the objection.

A. Heat would have the effect—

Mr. BOLAND.—I will amplify the objection and specify this, that these barrels involved in this case were filled with cocoanut oil, and the effect of heat in an abstract sense upon a barrel not on board a ship and not containing cocoanut oil is immaterial, irrelevant and incompetent.

The COURT.—There is a possibility that it might be, but I will overrule the objection.

A. Heat would have the effect of shrinking barrels.

Mr. McKEON.—Q. If the barrels contained cocoanut oil and they shrunk, would or would not that permit the cocoanut oil to leak?

Mr. BOLAND.—I object to that upon the ground that the witness [116] is not qualified to testify as to the idiosyncracies of cocoanut oil.

The COURT.—That is almost manifest. I sustain the objection, as long as he has not qualified on cocoanut oil.

(Testimony of W. F. Broderick.)

Mr. McKEON.—The Court will take judicial notice of that?

The COURT.—Yes. Of course, if a barrel shrinks it will leak.

Mr. McKEON.—Has glue any effect upon the barrels when carrying cocoanut oil? A. Yes.

Q. What effect?

A. It closes the pores of the wood, and prevents the wood from absorbing oil, and the oil from going through the wood.

Mr. McKEON.—That is all.

Cross-examination.

Mr. BOLAND.—Q. Does it make any difference what character of glue is used—glue is a very broad term, you know.

A. The exact quality of glue is required for that purpose I am not familiar with.

Q. You don't know? A. No.

**Testimony of P. J. Seale, for Libelant (In Rebuttal).**

P. J. SEALE, called for the libelant in rebuttal, sworn.

Mr. McKEON.—Q. Mr. Seale, did you make an examination of the shipment of cocoanut oil or the barrels that came in on the "Korea Maru," consigned to Willits & Patterson, in August or September, 1917? A. I did.

The COURT.—What is his business?

Mr. McKEON.—Q. What is your business?

A. Cargo surveyor.

Q. How long have you been engaged as such?

(Testimony of P. J. Seale.)

A. Three and one-half years in San Francisco.

Q. Where prior to that?

A. In Vancouver, British Columbia. [117]

Q. In the same business? A. Yes.

Q. Were these barrels glued? A. Yes, inside.

Cross-examination.

Mr. BOLAND.—Q. What character of glue?

A. I could not say the character of the glue; it was hard on the inside of the barrel.

**Testimony of W. E. Boyer, for Libelant (Recalled in Rebuttal).**

W. E. BOYER, recalled for the libelant in rebuttal.

Q. Mr. Boyer, since your firm has been importing cocoanut oil in San Francisco, have you had any cocoanut oil coming in in good order and condition?

A. I have.

Q. In what kind of barrels did those shipments arrive?

A. The same kind as the "Korea" shipment.

Q. Could you recall some of the ships that carried cocoanut oil which was in good order and condition?

Mr. BOLAND.—Objected to as immaterial and incompetent.

The COURT.—Some witness testified that there was always leakage. The objection is overruled.

A. I can mention a few, the "Puake," the "Melville Dollar," and the "Dix." I have just those three.

Mr. McKEON.—Q. Are there any others whose



(Testimony of W. E. Boyer.)

names you cannot recall now?

A. I think there are; yes.

Mr. McKEON.—That is all.

Cross-examination.

Mr. BOLAND.—Q. Upon what months or during what time were those shipments which you mentioned carried?

A. The "Puake" transported it between October and January; the "Melville Dollar" between June 19 and July 31st; the "Dix" carried hers in October.

Q. What kind of a vessel is the "Puake"?

A. I think she was a motor ship.

Q. A motor ship?

A. I am not sure about that.

Q. Was it an on-deck shipment?

A. An on-deck shipment.

Q. The "Melville Dollar"; what kind of a boat is that?

A. That is a regular liner, as near as I remember.

Q. Was that an on-deck shipment, too?

A. I am not sure of that.

Q. The "Dix"?

A. I think the "Melville Dollar" was under deck, I am not positive; I will look it up. [118]

Q. And the "Dix"?

A. The "Dix" was a Government boat, I think.

Q. What kind of a boat is it?

A. That is a regular passenger boat, Government boat.

Mr. McKEON.—Q. A transport boat?

A. A transport boat.

(Testimony of W. E. Boyer.)

Mr. BOLAND.—Q. Where was the shipment on that? A. From Manila.

Q. Was it an on-deck shipment or under-deck shipment? A. The “Dix”?

Q. Yes. A. I am not positive of that.

Mr. McKEON.—I might say that the “Melville Dollar” and “Dix” were freighters, and it could not be on deck.

A. My best recollection is under deck, but I am not sure. I will look it up.

**Testimony of P. W. Tompkins, for Libelant (In Rebuttal).**

P. W. TOMPKINS, called for the libelant in rebuttal, sworn.

Mr. McKEON.—Q. Mr. Tompkins, what is your profession? A. Industrial chemist.

Q. How long have you been such?

A. Twenty-four years.

Q. Have you had any experience with cocoanut oil? A. Considerable.

Q. What effect has heat upon cocoanut oil?

A. It has various effects; one is expansion; it depends on the temperature that the cocoanut oil is subjected to.

Q. A greater temperature has a tendency—the higher the temperature gets the greater the tendency to expand?

A. The higher the temperature the greater the expansion, yes.

**Cross-examination.**

Mr. BOLAND.—Q. You are of the firm of Curtis

(Testimony of P. W. Tompkins.)

& Tompkins? A. I am.

Q. Did you examine the Martino Brand Tomato Paste? [119]

Mr. McKEON.—I object to that.

Mr. BOLAND.—I want the witness to qualify a little.

The COURT.—I sustain the objection.

A. I couldn't tell you anything about whether I did or not.

Mr. BOLAND.—Q. You don't know whether your firm examined any Martino Brand Tomato Paste for the Martino factory?

Mr. McKEON.—I object to that.

The COURT.—The objection is sustained.

Mr. BOLAND.—I am prepared to show, in explanation of my question, so that your Honor won't think I am captious, that the firm of Curtis & Tompkins examined Martino Tomato Paste and held that it was pure, and that it was condemned by the Government as being impure and improper, after examination and approval by Mr. Tompkins' firm.

The COURT.—That is his firm. He is the witness. I don't know how big his firm is.

Mr. BOLAND.—I don't know whether he did the work himself. It is merely going to the witness' qualifications. I know that to be a fact, because I know there were 100,000 cases condemned, of this paste, which came under his observation.

The WITNESS.—I might say, for your Honor's benefit, I did not understand what he referred to—that brand meant nothing to me, but during the sea-

son we examined possibly a dozen samples, of hundreds and hundreds that were turned out, and that the Government has gone over it in a more thorough way I understand, and found part of the shipment was not according to the standard; the inference to be gained, from the fact that we had passed it and the Government has not passed it, or condemned it, is very misleading in the fact that they have gone over a whole season, or a whole shipment, where we have only gone into a few individual samples. [120]

The COURT.—We are not trying that case now.

Mr. BOLAND.—That is all.

Mr. McKEON.—If your Honor desires any testimony from the witness as to the fact that shaft alley about which you inquired sometime ago does not go under No. 5 tank, Mr. Rudden is prepared to testify to that.

The COURT.—I take it for granted it does not, unless there is evidence it did.

Mr. McKEON.—That is the fact, it does not.

The COURT.—From the evidence I have heard, there has not been any attempt by anybody to show whether there would be a normal leakage or seepage.

Mr. BOLAND.—Yes, your Honor.

The COURT.—Is there anything in the depositions to that effect?

Mr. BOLAND.—One of the witnesses testified there was normal seepage.

The COURT.—But no witness has tried to estimate it.

Mr. BOLAND.—I will call Mr. Seale.

**Testimony of P. J. Seale, for Claimant (Recalled).**

P. J. SEALE, recalled for claimant.

Mr. BOLAND.—Q. Mr. Seale, is there normal leakage of cocoanut oil in liquid form in wood containers?

A. By “normal” you mean average leakage?

Q. Yes.

A. Well, there is, as a matter of statistics, I should say, possibly  $\frac{1}{2}$  per cent or 1 per cent.

The COURT.—Does cocoanut oil all come from the same port?

Mr. BOLAND.—All that has been testified to-day came from Manila, but it does come from various ports in the Orient. [121]

The COURT.—Q. Would your answer of  $\frac{1}{2}$  of 1 per cent or 1 per cent go to shipments from Manila?

A. In what month was this shipped?

Mr. McKEON.—It was in July, I think, that it left Manila.

The COURT.—Would your answer be the same, what would normally be expected?

A. It would, taking the year’s shipment, excluding any conditions which are abnormal.

Q. Your answer was  $\frac{1}{2}$  of 1 per cent to 1 per cent? A. Yes.

Mr. BOLAND.—We have but the one witness, whom we are expecting, one of the officers of the liner, your Honor, who will testify as to the possibility of pumping or separating the oil.

Mr. McKEON.—My purpose in bringing out the fact that the soundings would have disclosed oil in

the bilges was to charge them with knowledge that No. 5 was leaking.

Mr. BOLAND.—I thought your purpose was to show that during the voyage we could have, instead of pumping it overboard, when the bilges were being pumped, saved it during the course of the voyage.

Mr. McKEON.—You would have taken some action to prevent the leakage.

Mr. BOLAND.—We propose to show by this witness we could not.

The COURT.—Do you dispute that?

Mr. McKEON.—It was possible to plug up No. 5 so that it would not leak at all.

The COURT.—That is another story.

Mr. McKEON.—This oil, as the depositions of the master and chief officer show, leaked out of the barrels in No. 5.

The COURT.—I understand that by putting the rod down in the bilges you claim it should have disclosed oil on the rod, [122] and they would know it was leaking?

Mr. McKEON.—Yes.

The COURT.—But counsel wants to show by this witness, who is coming, that if it gets into the bilges once there is no way to save it from the bilges. Do you dispute that?

Mr. McKEON.—I do not dispute the fact that when it once gets into the bilges that they could have recovered it from the bilges, but before it got into

(Testimony of J. G. Rudden.)

the bilges I maintain they could have prevented it from getting in there.

The COURT.—Does not that obviate the necessity of waiting for your witness? Counsel, as I understood, admits you could not have saved it after it was in the bilges.

Mr. BOLAND.—That will obviate that, but his contention now may necessitate some other witness to testify to the fact that there was no way of getting into No. 5 hold.

The COURT.—We will take a recess and you can confer with your principal.

(After a short recess the following proceedings were had:)

Mr. BOLAND.—After sending about town we have got the wrong man, I am sorry to say, Mr. McKeon is going to put on Mr. Rudden.

Mr. McKEON.—Mr. Boland is going to call someone on the ship who will testify according to his views, and rather than keep this witness here or call him at some other time, I will call Mr. Rudden now in anticipation of that evidence, and I might say rather than trouble the Court with it we could probably take it on reference.

Mr. BOLAND.—That will be quite satisfactory.  
[123]

**Testimony of J. G. Rudden, for Libelant (Recalled).**

J. G. RUDDEN, recalled for the libelant.

Mr. McKEON.—Q. Mr. Rudden, you have already testified that by placing a rod in the bilges

(Testimony of J. G. Rudden.)

and looking at it, it would have been possible to find the oil, if there was any in the bilges? A. Yes.

Q. Following that up further, with knowledge of the fact that oil was in the bilges, and that the ship was carrying oil in barrels, would you, if you were chief officer of the "Korea Maru," attempt to ascertain where the oil was leaking from, and if so, would you attempt to reclaim whatever oil was leaking or seeping?

Mr. BOLAND.—I object to the question as assuming a state of mind on the part of the witness that does not necessarily exist in other persons on board the ship; it is the facts we want, rather than what this witness might or might not have done.

The COURT.—I will overrule the objection. It is proper to get at it in some form.

Mr. McKEON.—You may answer the question.

A. For the benefit of the company, I would save the oil, by taking up these manhole plates in the bilge and bail it out; these manhole plates are big enough for a man to get through and clean them out.

Q. Would it be possible, assuming that the oil was coming out of No. 5 tank, to have stopped the oil from getting out of that tank?

A. Yes, you could put a wooden plug in the pipe leading from the tank and plug it up.

Q. If you knew that oil was coming out of that tank, leaking out of that tank, would you, as a practical matter, in furtherance of your duty in the care and custody of the cargo, entrusted [124]



(Testimony of J. G. Rudden.)

with the ship's care, plug it up that way?

A. Yes, provided there was no general merchandise in that tank.

Q. Provided there was no general merchandise in that tank?

A. Yes, as long as I knew the tank was a solid mass of oil, I would plug it up.

Q. That is possible on the "Korea Maru"?

A. It is possible.

Mr. McKEON.—That is all.

Cross-examination.

Mr. BOLAND.—Q. You recall, do you, from your experience with the "Korea Maru," where the bilges are?

A. They were athwartships, but as to the number of that bilge I don't know, which leads from No. 5 tank—the number of that bilge I don't know.

Q. Has No. 5 tank a separate bilge for itself, or a bilge in connection with other holds?

A. To the best of my recollection, there is a separate bilge.

Q. A separate bilge for No. 5 tank? A. Yes.

Q. Is there a lead-pipe from No. 5 tank to its separate bilge, or does it merely go down to the skin of the ship?

A. It goes down to the skin of the ship, both port and starboard sides.

Q. To its bilge? A. To the bilge.

Q. You said something about bailing. There is, I gather from your remarks, a manhole from the

(Testimony of J. G. Rudden.)

engine-room into the bilge which belongs to No. 5 tank?

A. Yes, there is a manhole plate on the port and starboard side.

Q. That is located in the engine-room, is it?

A. Located in the engine-room.

Q. Whereabouts in the engine-room?

A. In the wings.

Q. In one of the wings of the engine-room?

A. Yes—let me see. I won't say whether it is in the wings, or amidships. [125] I think it is in the wings.

Q. How deep from the floor of the engine-room is the bilge for No. 5 tank?

A. To the best of my recollection it is about three feet.

Q. Your idea is, then, that men could be detailed to take pails, open the manhole plate, reach down with the bucket, fill the bucket with cocoanut oil and carry it somewhere? A. Carry it somewhere.

Q. Where would they carry it?

A. They would carry it on deck.

Q. Where would they carry it?

A. They would carry it on deck.

Q. Where would they put it on deck?

A. I don't know where they would put it on deck; in barrels or something; they have a lot of empty barrels.

Q. Where are the empty barrels?

A. That they generally use to carry oil for the engines in.

(Testimony of J. G. Rudden.)

Q. You are assuming that there might be some barrels on board? A. Yes.

Q. If there were no barrels, where would they put it?

A. They could put it in one of the tanks.

Q. What tanks?

A. Into some of the double bottoms.

Q. What tanks? A. Double bottoms.

Q. Where are they?

A. Underneath the engine-room.

Q. How could they get it in there?

A. Take off the manhole plate.

Q. Aren't those also bilges?

A. No, those are tanks.

Q. What are they filled with?

A. They are mostly empty, except what they use for fresh water for the boilers.

Q. Would there be a strong likelihood of mixing the oil with the water for the boilers?

A. No, these tanks are too clean, and they are dry, especially in the engine-room.

Q. You think they could dip it from one bilge and place it in [126] another bilge?

A. Yes; they have a hand-pump on that ship, too, to the best of my recollection; they could pump it out.

Q. That all assumes, does it not, that they could stop the pumping of the bilge—they would not have to pump that bilge belonging to 5 tank on the voyage—they would not have to pump that?

A. They would not have to pump it, no.

(Testimony of J. G. Rudden.)

Q. There is some testimony here that they did pump that bilge. Why did they pump it?

A. I don't know.

Q. But assuming that they did, they would pump the oil overboard with the water?

A. If there was any water in the bilge, they would pump it overboard.

Q. And your idea would have been, instead of pumping it, to have taken that manhole off and dumped it into some other tank in the engine-room, provided there was another tank there empty?

A. Yes; those tanks are all empty there.

Q. They are all empty?

A. Some of them; some are full of feed water for the boilers.

Q. Who ordinarily does the sounding of the bilges on board?

A. The sounding of the bilges on the decks is done by the ship's carpenter; the sounding of the bilges in the engine-room is done by the engineers.

Q. Assuming that the engineers did not know what cargo was in the various holds, and that when they sounded they did not pay any attention to what was on the sounding rod?

A. The engineer on watch that sounds the bilge is supposed to put it in the log; the chief engineer notes that log, and if he finds anything wrong he immediately gets in touch with the master of the vessel and reports conditions.

Q. But I am assuming that he does not pay any attention to what is on the rod, except that there

(Testimony of J. G. Rudden.)

is a certain amount of [127] liquid in the bottom.

A. Then it is carelessness on his part not to report it.

Q. Not to report it? A. Yes.

Q. Suppose he does not pay any attention?

A. Then he is a poor engineer.

Q. Now, I understood you to say that this leakage in No. 5 tank would go down to the skin of the ship? A. Go through a pipe.

Q. Through a pipe? A. Yes.

Q. Go to the skin of the ship; and how, then, is it gathered into a pipe?

A. In the tank, in the after part, there is what they call a scupper, a strainer—you did not see it that day you were down there—as any water or oil gets in that tank it will run down through those pipes into the bilges; the bilges are independent of the double bottoms.

Q. There is a separate bilge for each one?

A. Yes.

Q. Could any one crawl into this bilge and plug up the pipe?

A. He could after they got some of it out; it would not be leaking down in torrents all at once; it would not leak out of the barrels all at once.

Mr. McKEON.—It is possible to plug up these pipes before it gets into the bilges? A. Yes.

Mr. McKEON.—If I may refer the Court to an answer to an interrogatory, in answer as to a question as to what became of the oil, there is this: “If any escaped it went into the scuppers and thence

(Testimony of J. G. Rudden.)

into barrels." I would like to know what those barrels are.

It is also the fact that this company, long after this cargo was delivered and discharged here, I think on the next voyage or thereabouts, tendered us a quantity of this oil as having been reclaimed from the ship. That is a fact, Mr. Chapin, is it not? [128]

Mr. CHAPIN.—Yes, presumably coming from the ship.

Mr. McKEON.—We only took your statement for it.

Mr. CHAPIN.—We have not any definite information as to that.

Mr. BOLAND.—There is one matter that Mr. McKeon just spoke of; it says, "If any escaped, it went into the scuppers, and thence into barrels." I prepared these answers to the interrogatories, and the word "barrels" is evidently a typographical error; it should be "bilges."

Mr. McKEON.—You want to change that?

Mr. BOLAND.—Yes.

Mr. McKEON.—If your Honor please, with respect to the suggestion that Mr. Boland made as to the libel, the Circuit Court of Appeals of this Circuit has held in these cases it makes no difference as to any allegation that you may make of negligence, breach of contract in not delivering the cargo in the same order as when delivered to it. That decision was the California Door Company against someone, either in the 204 or 205 Federal;

but, to avoid any discussion on that, I ask leave to strike out of the libel the words appearing on line 25, at page 3: "by said heat to liquefy and," and the allegation will then read, "That by reason of said improper stowage and said negligent care of said cargo, said oil was caused to escape from the barrels."

Mr. BOLAND.—I must object to the amendment, with all due deference to counsel, and wishing to extend every courtesy, because the case prepared upon the allegation of the libel, as your Honor has seen, from the character of the testimony which I brought out, and the allegation is it was caused to liquefy, and for that reason escaped from the barrels; that is the essential allegation which I prepared to meet in the [129] case, and that is the only allegation I prepared to meet, and consequently to emasculate the libel in that way changes the theory of the case; therefore, I must object to the amendment at this time.

The COURT.—As long as there is going to be a reference for one purpose, the amendment will be allowed. If you have been taken by surprise in that particular, you can bring in other evidence.

Mr. McKEON.—Of course, it has been stipulated long since that the oil was in liquid form when delivered to the ship. Now, how that can have any effect upon Mr. Boland's present contention, I don't know; in addition to that, it is not necessary, in cases of this kind, to allege anything except the shipment in apparent good order and condition—

The COURT.—I have allowed the amendment.

Mr. McKEON.—It may be deemed as amended without filing a formal amendment?

Mr. BOLAND.—Subject to my exception to the Court's order.

The COURT.—The exception is allowed.

Mr. McKEON.—You want to take the rest of the testimony on reference?

Mr. BOLAND.—Yes.

Mr. McKEON.—I will reserve, if I may, the opportunity of taking one more witness, who has not come to-day.

Mr. BLAND.—Very well.

[Endorsed]: Filed Apr. 25, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [130]

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In the Southern Division of the United States District Court in and for the Northern Division of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS, and I. L. PATTERSON, Copartners Doing Business Under the Firm Name of WILLITS and PATTERSON,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

TOYO KISEN KAISHA, a Corporation,

Claimant.



Friday, June 14, 1918.

**Deposition of U. Kondo, Taken De Bene Esse on the Part of the Claimant, Before John E. Manders, a Notary Public in and for the City and County of San Francisco, State of California. [131]**

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS, and I. L. PATTERSON, Copartners, Doing Business Under the Firm Name of WILLITS and PATTERSON,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

**Notice of Taking Deposition De Bene Esse.**

To Libelants Above Named and to Messrs. McCutchen, Olney and Willard and Ira A. Campbell, Their Proctors:

You and each of you will please take notice that on Friday, the 14th day of June, 1918, at the hour of three o'clock in the afternoon thereof, at the office of the undersigned, 1306 Hobart Building, No. 582 Market Street, in the City and County of

San Francisco, State of California, claimant herein will take the deposition *de bene esse* of U. Kondo, captain of the Japanese steamship "Persia Maru," a witness to be called on behalf of claimant, who is about to depart from said City and County and from the United States bound on a voyage to sea, before John E. Manders, Notary Public, in and for the City and County of San Francisco, State of California. [132]

Dated, San Francisco, California, June 13, 1918.

SAMUEL KNIGHT,

Proctor for Claimant.

[Endorsed]: Receipt of a copy of the within notice of taking deposition *de bene esse* is hereby admitted this 13th day of June, 1918.

McCUTCHEM, OLNEY & WILLARD,

J. D. L.

Proctors for Libelants. [133]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY.—No. 16,302.

CHARLES D. WILLITS, and I. L. PATTERSON, Copartners, Doing Business Under the Firm Name of WILLITS and PATTERSON.

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

TOYO KISEN KAISHA, a Corporation,

Claimant.

**Deposition of U. Kondo, for Claimant.**

BE IT REMEMBERED, that on Friday, the 14th day of June, 1918, pursuant to the notice of taking deposition hereto annexed, at the office of Samuel Knight, Esq., Proctor for the Claimant, in the above-entitled action, Room 1306 in the Hobart Building, No. 582 Market Street, in the City and County of San Francisco, State of California, personally appeared before me, John E. Manders, a notary public in and for the City and County of San Francisco, State of California, duly commissioned and sworn and authorized to administer oaths, etc., U. Kondo, a witness on behalf of the claimant in the above-entitled matter.

Samuel Knight, Esq., appeared as proctor for the [134] claimant, and Joseph P. McKeon, Esq., appeared as proctor for the libelants.

And the said witness having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say in answer to interrogatories put to him by the proctors for the parties respectively, as is hereinafter fully set forth:

Mr. KNIGHT.—May it be understood, Mr. McKeon, that the testimony of this witness need not be signed, and that it may be taken in shorthand under the usual stipulation?

Mr. McKEON.—Yes.

U. KONDO, a witness produced on behalf of the claimant, was duly sworn, through the interpreter, to testify the truth, the whole truth, and nothing but the truth, and upon examination through the Interpreter, testified as follows:

#### Direct Examination.

Mr. KNIGHT.—Q. Captain Kondo, you are the master of the steamship “Persia Maru,” are you not? A. Yes, I am the captain.

Q. And you are about to leave this port, bound for the Orient, to-morrow?

A. Yes, I am expecting to leave here to-morrow.

Q. Will you state whether or not you were the first officer of [135] the “Korea Maru,” on her homeward voyage No. 4? A. I was; yes.

(Deposition of U. Kondo.)

Q. Were you the first officer of that vessel on and about the 7th of July, 1917, when the vessel was at Manila, Philippine Islands?

A. Yes, sir; I was there on board.

Q. State, Captain, whether or not, as first officer, you had anything to do with the loading of the steamship at Manila, in July, 1917?

A. Yes, sir; I was in charge of that duty.

Q. Do you recall taking on board of the steamer at Manila a certain quantity of cocoanut oil, consigned to Willits and Patterson, of this city?

A. I remember it.

Q. Was there any other cocoanut oil stowed on that vessel just prior to her homeward voyage No. 4, at Manila, other than the cocoanut oil consigned to Willits and Patterson—on that voyage, I mean?

A. Unless I look up my memorandum, I can't say as to that question.

Mr. KNIGHT.—There were 542 barrels of this cocoanut oil, were there not?

Mr. McKEON.—Yes.

Mr. KNIGHT.—Q. Referring particularly to the 542 barrels of cocoanut oil said to have been shipped by the steamer "Korea Maru" from Manila to San Francisco, on that particular voyage, I ask you where that oil was stowed?

A. It was stowed in two holds. Part of it was stowed in hold No. 5, and the remainder in hold No. 7.

Q. Can you identify on this photographic copy of what purports [136] to be the cargo space of

(Deposition of U. Kondo.)

the "Korea Maru" where the two holds are in which you say this cocoanut oil was stowed?

A. Yes, I can point it out.

Q. Please do so. I am referring to the paper headed "Korea & Siberia." A. Yes.

Mr. KNIGHT.—The witness shades the portion of the hold to which he refers, and also shades a portion of the after part of the ship which is enclosed in a rectangle marked "294 tons," the No. 7 hold, the first portion shaded being the No. 5 hold.

Q. Do you know, Captain, how many tons of the cocoanut oil referred to were stowed in the No. 5 hold?

A. I can't give you the exact tonnage of cocoanut oil stowed in that hold, but I can give you the exact figure as soon as I look over my memorandum.

But at any rate, that space was filled up with nothing but cocoanut oil.

Mr. KNIGHT.—The witness referred to the No. 5 hold.

Q. In how many tiers was the cocoanut oil in the No. 5 hold stowed? A. Three tiers only.

Q. Did three tiers completely fill that part of the hold? A. Yes, sir.

Q. How was that dunnaged, if at all?

A. A very good dunnage was given for each and every tier.

Q. Captain, can you describe further than that how each tier was dunnaged?

Mr. McKEON.—I move to strike out the last an-

(Deposition of U. Kondo.)

swer as being the [137] conclusion of the witness and not responsive.

Mr. KNIGHT.—Q. Captain, we will have to get your oral testimony upon that.

A. A first very heavy dunnage was placed on the floor of the hold. Then the barrels of cocoanut oil were placed, and then above that more wood for dunnage. In other words, wood dunnages were placed on each and every tier of the cocoanut barrels.

Q. Was there any dunnage placed at the end of the tiers?

A. What do you mean by “the end of the tiers”?

Q. Was there any dunnage placed there except the dunnage between the tiers? Was there any dunnage placed at the end of any of the barrels to keep them from slipping?

A. Dunnage was placed on both ends of the barrels, so the weight would not be altogether on the center part of the barrels.

Q. At both ends of the barrels?

A. Yes, sir, at both ends of the barrels.

Q. Was there any cargo placed on the cocoanut oil in that No. 5 hold?

A. No cargo was taken in that hold other than the cocoanut oil.

Q. In how many tiers was the cocoanut oil stored in the No. 7 hold? A. One tier only.

Q. Was that dunnaged?

A. Proper dunnage was given it.

Q. How was it dunnaged? Please describe, Cap-

(Deposition of U. Kondo.)

tain, a little more fully as to that.

A. Contrary to the way the cocoanut oil barrels were stowed in the No. 5 hold, in the No. 7 hold the barrels were set on end and dunnage was placed on them [138] that was to take other cargo.

Q. Was the cocoanut oil in No. 5 hold—were the barrels of cocoanut oil in No. 5 hold resting on their sides?

A. Yes, sir, on their sides in hold No. 5.

Q. Was any dunnage placed on the sides of any of the barrels in No. 7 hatch?

A. Yes, so that those barrels would not move when the ship rolled, wooden dunnage was given, and also other cargo was placed, so the barrels would not move.

Q. What other cargo was placed on the cocoanut oil in the No. 7 hatch?

A. General merchandise.

Q. Did you see the cocoanut oil before it was taken on board of the vessel?

A. Yes, sir—I saw the barrels.

Q. On the wharf at Manila?

A. I saw some of them on a barge alongside the ship.

Q. Did you see all of the barrels of cocoanut oil before they were taken on board of the steamer?

A. Yes, sir, I saw all of them.

Q. What was the condition of the barrels as you observed them at that time?

A. The barrels were all stained with oil.

Q. The barrels were all stained with oil?



(Deposition of U. Kondo.)

A. Yes, sir.

Q. Could you tell from the appearance of the barrels then whether they were new or old?

A. It looked as though the barrels were all old barrels, although they were stained and you could not describe it very well.

Q. Could you tell from the appearance of the barrels whether or not they had been painted?

A. My best recollection is some [139] of the barrels were painted with paint—I don't remember whether all of them were painted or just some of them.

Q. In what manner were they taken on board of the vessel?

A. We took them into the ship by means of a winch.

Q. And were they taken with a net or with rope?

A. Most of them were taken in by means of a net, but there were a few which were taken in by means of ropes.

Q. Captain, how was the No. 5 tank ventilated, if at all?

A. There were two ventilators in hatch No. 5, to give air in circulation.

Q. Where did those ventilators start, and where did they end?

A. The end of the ventilator is in the thrust recess, and the top of the ventilator is at the promenade deck.

Q. Both open to the air?

A. Yes, sir, open to the air.

(Deposition of U. Kondo.)

Q. What kind of a top has each of those ventilators? A. A mushroom cover.

Q. What kind of a cover is that?

A. It is known as a mushroom on the ship—it is a round cover.

Q. Like a chimney?

A. I don't see any cover to a chimney.

Q. What is the object of a mushroom top?

A. There are several reasons, but the main reasons are that the air can come in from any direction, and also air can go through from the bottom. Another purpose is to prevent rain water from coming in.

Q. How does the air circulate in those ventilators? Does it go from the thrust recess to the promenade deck, or from the [140] promenade deck to the thrust recess?

A. That largely depends upon the condition of the atmosphere. Sometimes the cold air might go through from the shaft alley, and sometimes the cool air from outside would come in from the top.

Q. It depends on atmospheric conditions, does it?

A. Yes, movements of winds, and climatic conditions otherwise.

Q. Has the movement of the ship anything to do with it?

Mr. McKEON.—That is objected to as leading and suggestive.

A. Yes. There is some variation to it. In case of a head wind, the cold air often comes in.

Q. Does the air, through either of those ventila-

(Deposition of U. Kondo.)

tors, get into the No. 5 hatch?

A. Yes, sir, the doors of both ventilators are always open, and cold air always comes in.

Q. Then there is a door in each of those ventilators opening into the No. 5 hatch, is there?

A. Yes, sir.

Q. Will you state, Captain, what is contained on each side of the No. 5 hatch?

A. Both sides of hatch No. 5 are fresh-water tanks.

Q. Are those the main fresh-water tanks of the vessel, or are those tanks supplied from some other part of the vessel with fresh water?

A. There are other fresh-water tanks on the ship that supply the fresh water to these two tanks on the sides of hatch No. 5.

Q. Is the water fresh water for the ship's use—is that fresh water drawn from these tanks on each side of the No. 5 hatch?

A. Yes, it is always fresh water. [141]

Q. Have you any cold-storage tank on the vessel?

A. On the top of hold No. 5 there is an ice chamber.

Q. An ice chamber? A. Yes, sir.

Q. And what is contained and what was on that ship contained in that ice chamber?

A. In the ice chamber there is contained meats and vegetables, and we always freeze them with plenty of ice.

Q. What was the vessel drawing when loaded at Manila, just prior to her voyage home?

(Deposition of U. Kondo.)

A. My best recollection is about 27 feet aft.

Q. And where would that bring the water with reference to tank No. 5?

A. At least over and above one-half of tank No. 5.

Q. How was the temperature on that voyage 4 homeward?

A. It was the hottest weather and the hottest voyage of the year.

Q. Will you state whether or not that cocoanut oil was in liquid form at the time it was taken on board at Manila?

A. It was in liquid form.

Mr. KNIGHT.—I think that is all.

Cross-examination.

Mr. McKEON.—Q. Did you examine the cocoanut oil to ascertain whether it was in liquid form at Manila?

A. Do you mean by taking liquid cocoanut oil outside of the barrel?

Q. How do you know it was in liquid form?

A. I noticed that some of the barrels were leaking, and you can't expect to have cocoanut oil in solid form at that season. [142]

Q. That is the only reason that you know it?

A. And also I noticed that the liquid cocoanut oil perforated through the wood of the barrels.

Q. That is a pretty hot season, isn't it?

A. Yes, sir. It was hot.

Q. Usually at that time of the year it is hot, is it not? A. Yes, sir, it is hot.

(Deposition of U. Kondo.)

Q. Coconut oil is a cargo that requires a cool space, does it not?

A. A cooler space is better.

Q. Particularly so in hot weather?

A. Yes, it is.

Q. Captain, in the place that you have been referring to as the No. 5 hold, where the coconut oil was stowed, that is a tank, is it not?

A. You may call it a tank, but, according to the ship's construction, it is not a tank.

Q. What is it?

A. It is an ordinary hold.

Q. The fresh-water tanks that you speak of, are they on top of that No. 5 tank where the oil was, or are they parallel with it on the orlop deck?

A. The fresh-water tanks are on the sides of that hold.

Q. They are exactly the same sort of tanks as the No. 5 hold, are they not?

A. They are of different shape.

Q. Constructed of the same material?

A. It may be the same material, but different shapes.

Q. How much space does that No. 5 compartment take up in the No. 5 hold—one-third of it or one-half of it, or three-quarters of it, or how much?

A. About one-quarter [143] of it or a little smaller.

Q. On top of the No. 5 tank where the oil was stowed, did you have any hatch boards?

A. Yes, sir, there were hatch boards.

(Deposition of U. Kondo.)

Q. And on top of those hatch boards, what did you have?

A. When there is any cargo, we put cargo on them.

Q. You had cargo there this time, did you not?

A. Yes, there was a cargo.

Q. And you had cargo to the ceiling of the next compartment, did you not?

A. There was about one foot of space between the ceiling and the top of the cargo.

Q. And that cargo compartment is about eight feet high, isn't it?

A. On the beam, about 7 feet.

Q. From the beam to the top of the No. 5 tank is 7 feet? A. Yes, sir, 7 feet.

Q. No. 5 tank rests on the orlop deck, does it not?

A. In this particular steamer there was made a recess underneath this tank, and for that reason you might call it the orlop-deck, but we call it the hold.

Q. The cold-storage compartment that you speak of was not right on top of the No. 5 tank, was it?

Mr. McKEON.—By the way, are you going to put this photographic copy that you referred to in evidence?

Mr. KNIGHT.—Yes, I will identify that in evidence.

Mr. McKEON.—Then my last question may be stricken out.

Q. This drawing here correctly shows the cold-

(Deposition of U. Kondo.)

storage plant as [144] it relates to the No. 5 tank, does it not? A. Yes, sir.

Q. The thrust recess below No. 5 tank opens right into the engine-room there, does it not?

A. Yes, there is a door.

Mr. McKEON.—Repeat that question to him, Mr. Interpreter.

A. (After question repeated by the interpreter.) Usually it is open.

Q. And you say the ventilator that goes through the No. 5 compartment opens in through this thrust recess?

A. It is open in the after part of the recess.

Q. In the after part of the thrust recess, this ventilator opens? A. Yes, sir.

Q. And that apparently is sketched on here now?

A. Yes, sir.

Mr. KNIGHT.—The captain sketched that himself.

Mr. McKEON.—Q. Did you sketch that?

A. Yes, sir. But of course there is a little difference in the drawing.

Q. That goes right down into the thrust recess?

A. Yes, sir.

Q. This No. 5 compartment is directly abaft the engine-room, is it not? A. Yes, sir.

Q. And the thrust recess is directly under the No. 5 tank? A. Yes, under hold No. 5.

Q. The engine-room is a pretty hot place, Captain, is it not?

(Deposition of U. Kondo.)

A. In comparing with these other compartments, the engine-room is hot.

Q. Captain, this drawing here that has been referred to as [145] "Korea & Siberia" represents the stowage plan of the vessel, does it not, and represents the stowage plan upon this particular voyage 4? A. It only states the spaces.

Q. Yes, but with reference to the places to put stores, etc., it is all true—here where it refers to the stores, that means the ship's stores, does it not?

A. That refers to the engine-room stores.

Q. The water line of No. 5 tank and No. 7 lower hold are just the same, are they not?

A. I think on the outside it is about the same.

Q. You said the ship was drawing 27 feet aft.

A. Somewhere near 26 or 27.

Q. Was she loaded astern? Was she deeper aft than she was forward? A. Yes, sir.

Q. Then No. 7 hold would be down deeper in the water than No. 5 tank, wouldn't it?

A. Perhaps a little bit.

Q. Were you on the ship on voyage 4? Did you come to San Francisco with the ship?

A. Yes, sir, I came with her.

Q. You sketched this ventilator running down here in the forward part of the No. 5 hold, Captain. You have already testified to that.

A. Yes, sir.

Q. Is that the well—and that the skylight?

A. It is a little different shape from that.

Q. This is the skylight, isn't it?



(Deposition of U. Kondo.)

A. The skylight, and this here—it is about the same height (indicating).

Mr. KNIGHT.—Continue the sketch that you have drawn on up, [146] then.

A. It is about the same height as this skylight. (The witness draws in illustration.)

Mr. McKEON.—Q. What other ventilator did you have in the No. 5 hold there?

A. One on the upper deck.

Q. Where did that pass through No. 5 tank? Over here—if it did at all? (Indicating.)

A. About here (showing).

Q. Will you draw a line, showing where the other ventilator went through.

A. There it is right there (showing).

Q. Then there were two ventilators in the No. 5 hold? A. One on each side.

Q. Starboard and port?

A. Port and starboard, two in this after part of the No. 5, and two here where I have drawn that, one on each side on the after part and one on each side on the forward part.

Q. And they opened into the thrust recess, as they passed through the No. 5 tank?

A. There is no connection there (showing).

Q. There is no connection with the after ventilator, but the forward ventilator that went through No. 5 opened into the thrust recess?

A. What I mean is this: one ventilator that goes through hold No. 5—

Q. (Interrupting.) No. 5 tank.

(Deposition of U. Kondo.)

A. (Continuing.) —hold No. 5 goes through the thrust recess.

Q. This whole thing is hold No. 5?

A. Yes, and when that goes through this tank, it goes through the thrust recess. [147]

Q. Captain, is the No. 7 hold, where this oil was stowed, a cooler compartment than the No. 5 tank?

A. There is no particular difference as to the temperature.

Q. There is not? A. No, sir.

Q. Is it hotter in the engine-room, Captain, than it is in the No. 7 hold?

A. Inside of the engine-room is much warmer than No. 7.

Q. Captain, is there any opening into the No. 5 tank at all, except on top? Is that completely enclosed?

A. No, there is no other opening except the one on the top.

Q. Then you would say it is completely enclosed?

A. Yes, sir.

Q. What was the tank constructed of?

A. Steel.

Q. Captain, what is the hottest place aboard your ship? A. The boiler-room.

Q. And how do you separate the boiler-room from your cargo apartments?

A. What do you mean by that?

Q. You put bunkers in there, do you not—bunker coal. A. The bunkers are in front.

Q. And bunkers after, too, aren't there, and

(Deposition of U. Kondo.)

bunkers on top as well? A. Yes, sir.

Q. Bunkers all surrounding it—

Mr. McKEON.—I think that's all.

Mr. KNIGHT.—One further question.

Redirect Examination.

Mr. KNIGHT.—Q. Captain, do the ventilators which go through the forward part of the No. 5 tank also pass through the cold storage room?

A. Yes. [148]

Q. Is there any opening from those ventilators into the cold-storage room?

A. Yes, sir, there is a door in the cold-storage room.

Q. Leading into the ventilators?

A. Just outside of the cold-storage room.

Q. Does the ventilator get any of the air from the cold-storage room.

A. The air does not directly go through, but the cold air is always surrounding that portion of the ventilator.

Recross-examination.

Mr. McKEON.—Q. Captain, this after ventilator that you have just been testifying to in the after part of the No. 5 hatch, that does not feed the No. 5 tank at all, does it?

A. The cold air that comes through this after ventilator always cools the side of hold No. 5—there is good ventilation down here at the side of hold No. 5.

Q. Captain, this cool air that you think goes in

(Deposition of U. Kondo.)

through this after ventilator, passing along through the cargo space there, this cargo compartment, does that help to cool the after end of the No. 5 tank?

A. The main purpose is to give good ventilation for this space, the whole space.

Q. And you think, Captain, that that cools this steel after end of the No. 5 tank?

A. Yes, sir, it always cools it.

Q. It always does?     A. Yes, sir.

Mr. McKEON.—That is all. I understand that this photographic copy is to be attached to the deposition of the witness.

Mr. KNIGHT.—I would like to use it with other witnesses. [149] It may be identified by the reporter and then produced at the trial upon that identification.

Mr. McKEON.—Very well.

Mr. KNIGHT.—Then it is agreed that the map may be filed at any time afterwards, as it is merely a copy of the blue-print now on file.

Mr. McKEON.—Yes.

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

I, John E. Manders, a notary public in and for the City and County of San Francisco, State of California, duly commissioned and sworn and authorized to administer oaths, do hereby certify that U. Kondo, the witness in the foregoing deposition named, was by me, prior to the giving of his said deposition, duly sworn to testify the truth, the



In the District Court of the United States in and for the Southern Division of the Northern District of California.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON, Copartners, Doing Business Under the Firm Name of WILLITS & PATTERSON,  
Libelants,

vs.

The Japanese Steamship, "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

**(Deposition of George C. Arnold, Taken on Behalf of Libelants.)**

BE IT REMEMBERED that on Thursday, October 31, 1918, pursuant to stipulated of counsel hereunto annexed, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., George C. Arnold, a witness called on behalf of the libelant.

Joseph McKeon, Esq. (for Messrs, McCutchen, Olney & Willard), appeared as proctor for the libelant, and Samuel Knight, Esq., and F. E.

Boland, Esq., appeared as proctors for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the [152] above-named witness may be taken *de bene esse* on behalf of the libellant at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Thursday, October 31, 1918, before Francis Krull, a United States Commissioner for the Northern District of California and in shorthand by Charles R. Gagan.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived, unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing thereof are hereby expressly waived. [153]

**Deposition of George C. Arnold, for Libelants.**

GEORGE C. ARNOLD, called for the libelants, sworn.

Mr. McKEON.—Q. What is your name and residence?

A. George C. Arnold; Manila.

Q. Were you in Manila on or about the 7th day of July, 1917? A. Yes, sir.

Q. Do you remember a shipment of cocoanut oil on board the steamer "Korea" on or about that time? A. Yes, sir.

Q. What was your connection with Willits & Patterson at that time?

A. I was manager of the Willits & Patterson house in Manila.

Q. Prior to the shipment of that oil on board the "Korea Maru" did you have occasion to see that cocoanut oil in barrels?

A. Yes, I saw the oil in the warehouse before it was loaded into the ship at Manila.

Q. Will you describe the warehouse that that cocoanut oil was in?

A. It was a warehouse with a stone floor, thick stone walls, and a tile roof.

Q. Did you go into that warehouse and examine the barrels of oil prior to shipment? A. Yes, sir.

Q. What was the condition of those barrels with respect to whether they were new or old?

A. They were new barrels.

Q. Did you find any of the barrels leaking?

A. No.



(Deposition of George C. Arnold.)

Q. Did you find any of the barrels stained?

A. No, I don't think so, any more than they would be stained from filling or from being transferred from the lighters into the warehouse.

Q. By that you mean that you did not see any evidence of stain from oil on the barrels leaking out? A. No, I did not.

Q. Was there anyone else in the warehouse examining these barrels at that time that you saw?

A. No one except the cooper [154] who was employed there.

Q. What was the cooper doing?

A. He was tightening hoops.

A. Going over each barrel, examining it?

A. Yes; that was his duty, to examine every barrel; it is customary to re-cooper barrels after they have been handled.

Mr. BOLAND.—I move to strike out the latter portion of the answer as not responsive to any question and as a volunteer statement, and immaterial, irrelevant and incompetent.

Mr. McKEON.—Q. In your judgment, Mr. Arnold, from what you saw, were those barrels in good order and condition?

A. They were.

Cross-examination.

Mr. BOLAND.—Q. Did you take the temperature of this warehouse? A. No, sir.

Q. How were the barrels piled?

A. Mostly on bilges; some of them were on end.

Q. Were they piled in tiers?

(Deposition of George C. Arnold.)

A. They were two tiers high; they were two tiers over part of the warehouse but no higher than that.

Q. Did you walk over the top of the tiers?

A. I walked over the barrels; yes.

Q. You could not see the underneath tier from walking over the top tier?

A. Oh, yes, they are cradled in so you can see them very easily.

Q. You could not see the underneath side of every barrel?

A. No, you could not see the underneath side of every barrel, but you could see the floor under every barrel, with the exception of exactly underneath it.

Q. Did you stoop down to look under the barrels, each of them as you passed?

A. No. Not all of them. [155]

Q. Your examination was simply that you walked through and saw the barrels and walked over the top of them?

A. My examination was that I walked in and examined the barrels, as I have done in every other shipment.

Q. It is quite possible that some of them were stained on the underneath side where they were piled in tiers, without your observing it?

A. There is a possibility that there might have been a stain on the underneath side of some of the barrels. That may have been caused in filling the barrels.

Mr. BOLAND.—To the last part of the answer I

move that it be stricken out as being a volunteer statement and not responsive to the question.

Redirect Examination.

Mr. McKEON.—Q. If some of the barrels were stained on the immediate bottom, on the portion nearest to the floor, on the lower tier, could or could not that stain have been placed there in filling the barrels? A. It could have been. [156]

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I certify, that, in pursuance of stipulation of counsel, on Thursday, October 31, 1918, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared George C. Arnold, a witness called on behalf of the libelant in the cause entitled in the caption hereof; and Joseph McKeon, Esq. (for McCutchen, Olney & Willard), appeared as proctor for the Libelant; and Samuel Knight, Esq., and F. E. Boland, Esq., appeared as proctors for the respondent, and the said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then

and there taken down in shorthand notes by Charles R. Gagan, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the deposition to the witness and the signing thereof were expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hands to the clerk of the United States District Court for the Northern District of California, the Court for which the same was taken.

And I do further certify that I am not of counsel, nor attorney [157] for either of the parties in said deposition, and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 12th day of February, 1919.

FRANCIS KRULL,  
United States Commissioner, Northern District of  
California, at San Francisco.

[Endorsed]: Filed Feb. 12, 1919. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [158]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON, Copartners, Doing Business Under the Firm Name of WILLITS & PATTERSON,  
Libelants,

vs.

The Japanese Steamship, "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

**Depositions of T. Ota, Y. Iijima, and Y. Yamamura, Taken on Behalf of the Claimant Before John E. Manders, a Notary Public in and for the City and County of San Francisco, State of California. [159]**

San Francisco, California, Monday, January 21st,  
1918.

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS, and I. L. PATTERSON, Copartners Doing Business Under the Firm Name of WILLITS and PATTERSON,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

**Notice of Taking Depositions De Bene Esse of Captain T. Ota and Y. Yamamura.**

To Libelants Above Named and to Messrs. McCutchen, Olney & Willard and Ira A. Campbell, Their Proctors:

You and each of you will please take notice that on Monday, the 21st day of January, 1918, at the hour of two o'clock in the afternoon thereof, at the office of the undersigned, No. 1306 Hobart Building, No. 582 Market Street, in the City and County of San Francisco, State of California, claimant herein will take the depositions *de bene esse* of T. Ota, Captain, and Y. Yamamura, Chief Officer, respectively, of the Japanese steamer "Korea Maru," witnesses to be called on behalf of

claimant, who are about to depart from said City and County and from the United States bound on a voyage to sea, before John E. Manders, Notary Public, in and for the City and County of San Francisco, State of California.

Dated: San Francisco, California, January 18, 1918.

SAMUEL KNIGHT,  
Proctor for Claimant. [160]

Due service and receipt of a copy of the within notice of taking depositions is hereby admitted this 18th day of January, 1918.

IRA A. CAMPBELL,  
McCUTCHEN, OLNEY & WILLARD,  
Proctors for Libelants. [161]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS, and I. L. PATTERSON, Copartners Doing Business Under the Firm Name of WILLITS and PATTERSON,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

**Notice of Taking Deposition De Bene Esse of T.  
Miyamai.**

To Libelants Above Named and to Messrs. McCutchen, Olney & Willard and Ira A. Campbell, Their Attorneys:

You and each of you will please take notice that on Monday, the 21st day of January, 1918, at the hour of two o'clock in the afternoon thereof, at the office of the undersigned, 1306 Hobart Building, No. 582 Market Street, in the City and County of San Francisco, State of California, claimant herein, will take the deposition *de bene esse* of T. Miyamai, first engineer of the Japanese steamship "Korea Maru," a witness to be called on behalf of claimant, who is about to depart from said City and County and from the United States bound on a voyage to sea, before John E. Manders, notary public, in and for the City and County of San Francisco, State of California.

Dated: San Francisco, California, January 19, 1918.

SAMUEL KNIGHT,  
Proctor for Claimant. [162]

Due service and receipt of a copy of the within notice of taking deposition is hereby admitted this 19th day of January, 1918.

IRA A. CAMPBELL,  
McCUTCHEM, OLNEY & WILLARD,  
Proctors for Libelant. [163]



In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS, and I. L. PATTERSON, Copartners Doing Business Under the Firm Name of WILLITS and PATTERSON,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

BE IT REMEMBERED, that pursuant to the notices hereunto annexed, on Monday, January 21st, 1918, at the office of Samuel Knight, Esq., No. 1306 Hobart Building, No. 582 Market Street, in the City and County of San Francisco, State of California, personally appeared before me, John E. Manders, a notary public in and for the City and County of San Francisco, State of California, and the notary public named in said notices, authorized to take acknowledgments of bail and affidavits, etc., T. Ota, Y. Iijima,, and Y. Yamamura, witnesses called on behalf of the claimant;

Samuel Knight, Esq., appeared as proctor for the claimant, and Joseph B. McKeon, Esq., representing Messrs. McCutchen, Olney & Willard, appeared as proctors for the libelants.

P. M. Miyasaki, a competent interpreter of the Japanese language, having been first duly sworn to translate from English into Japanese the oath administered by the notary public to said [164] witnesses, and the questions, both on direct and cross-examination propounded to them, and from Japanese into English the answers of said witnesses to said questions, acted as interpreter.

Thereupon said witnesses having been by me, through said interpreter, first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause aforesaid, did thereupon depose and say as is hereinafter set forth. [165]

### **Deposition of T. Ota, for Claimant.**

#### Direct Examination.

(By Mr. KNIGHT.)

Q. Captain Ota, you are the captain of the steamer "Korea Maru," are you not?

A. Yes, sir.

Q. How long have you been the master of that vessel?

A. From the first voyage of the "Korea Maru," that is to say, about the first part of August, 1916.

Q. "The first voyage of the 'Korea Maru'" under the Toyo Kisen Kaisha flag—I suppose that is what you mean, Captain? A. Yes, sir.

Q. Are you about to go to sea, Captain, on Wednesday of this week, as master of the steamer "Korea Maru"? A. Yes, sir.

Q. Bound for Yokohama and other Japanese and

(Deposition of T. Ota.)

Chinese ports? A. Yes, sir.

Q. Captain, I show you what purports to be a blue-print of the steamer "Korea Maru" and the steamer "Siberia"; will you state whether or not that blue-print correctly shows, particularly, the cargo carrying portion of the steamer during the time that you have been master of her?

A. Yes, sir.

Q. I call your particular attention to the holds which have been designated No. 1 hold, No. 2 hold, or, 1 hatch, 2 hatch, and 3 hatch; have you three or four hatches on the forward part of the "Korea" at the present time?

A. The upper portion, two hatches, and down below there are four hatches.

Q. By the "upper portion," do you mean the main deck? [166]

A. You might call it the main deck, but we do not call it that; we call it "upper deck."

Q. There are two hatches to the upper deck, and will you state whether or not there are two sections to each hatch, speaking now of the forward part of the vessel?

A. Yes, sir; the upper portion is one while it is again divided into two sections down below.

Q. Then, how are those sections—what are those sections called on the vessel?

A. Do you mean by the name of the hatch or the deck?

Q. I want to know how they are designated as

(Deposition of T. Ota.)

far as the cargo is concerned so as to show where the cargo is stowed.

A. We designate by numbers; first we commence from No. 1.

Q. You commence from No. 1 hatch, and how do you designate the space under No. 1 hatch?

A. No. 2.

Q. That is, No. 1 comprises No. 1 and 2?

A. Yes, sir.

Q. No. 1 and No. 2 holds? A. Yes, sir.

Q. Under 1 hatch is No. 1 and No. 2 hold; under No. 2 hatch what are the numbers of the holds?

A. No. 2 hatch, No. 3 hold.

Q. And where is No. 4 hold?

A. The one next to hold 3, No. 4.

Q. That is, No. 3 and 4 are supplied from No. 3 hatch; is that right? A. Yes, sir.

Q. Now, is the hatch used that is under the saloon on the forward part of the "Korea," the hatch to which I am pointing, the hatch under the saloon; is that hatch used?

A. Yes, sir, we do use it.

Q. And what is the name of that hatch?

A. Hatch No. 4.

Q. And what is the hold called under hatch No. 4? A. We call it hold No. 4.

Q. Hold No. 4? A. Yes. [167]

Q. Now, taking the after part of the vessel; how many hatches are there aft of the engine-room?

A. Four.

Q. How are those hatches numbered?

(Deposition of T. Ota.)

A. The number continues commencing from No. 1 hatch in the front part of the steamer.

Q. And what is the first hatch aft of the engine-room, what number? A. Hatch No. 5.

Q. Then, are those numbered after the engine-room 5, 6, 7 and 8? A. Yes, sir.

Q. Then, this "No. 4" here does not describe this hatch? A. No, sir.

Q. I am referring to the legend marked "No. 4 hatch," Mr. Reporter. Captain, when did you first see the barrels of cocoanut oil that was taken on board the "Korea Maru" at Manila in early July, 1917?

A. Now, I have forgotten the date, but it was sometime early in July; it was about the 7th or 8th. I saw the cocoanut oil at the time of loading at Manila.

Q. What was the external appearance of that cocoanut oil?

A. At the time I saw the barrels of cocoanut oil they were scattered in and around the warehouses at Manila.

Q. What was the external appearance of the oil, the barrels?

A. I saw that a number of the barrels were stained; on some appeared the cocoanut oil outside. I do not know whether it perforated through the wood that made the barrels or leaked through.

Q. Under whose direction was the cocoanut oil stowed on the steamer?

A. We received an order from our agent at

(Deposition of T. Ota.)

Manila and the chief officer directed the loading.

Q. What is the chief officer's name?

A. U. Kaondo.

Q. Mr. Kaondo has left the steamer, has he not?

A. He left the steamer at Yokohama on this voyage. [168]

Q. And state whether or not he is employed by the company in Yokohama. A. Yes, sir.

Q. Do you know, Captain, where these barrels of cocoanut oil were stowed on the vessel?

A. Yes, sir.

Q. Will you point on the blue-print to the place or places where this cocoanut oil was stowed. Now, will you point, Captain— A. No. 5.

Q. Is that known as tank No. 5? A. Yes, sir.

Q. I will mark that with a cross. Do you know how many barrels were stowed in tank No. 5?

A. Why, I can't give you the exact number, but the approximate number.

Q. I think we can get the exact number. Now, was there any of that cocoanut oil stowed in any other part of the vessel than tank 5?

A. Yes, sir.

Q. In what other part of the vessel was some of that cocoanut oil stowed? A. In hold 7.

Q. They are both aft, are they not?

A. Yes, sir.

Q. Now, then, Captain, I ask you whether—

A. This is 7.

Q. Look at it and see if that is 7. Stowed here (indicating)? A. 7; the lower hold.

(Deposition of T. Ota.)

Q. It was stowed in the lower hold of No. 7, was it—No. 7 hatch? A. Yes.

Q. The place that I mark with a circle and a cross inside?

A. Yes, sir, and above the shaft in No. 7.

Q. I will mark that "No. 7." Some of the coconut oil was then stowed in No. 7 hold, lower hold?

A. Yes.

Q. Was the cocoanut oil at that time stowed in any other hold on the occasion of the voyage from Manila to Hongkong and then to San Francisco, than in No. 5 and No. 7? A. No. [169]

Q. Captain, are you familiar with No. 5 tank?

A. Yes, sir, I do.

Q. What means of ventilation, if any, has that No. 5 tank?

A. There are four means to get fresh air, and two of them are through the shaft alley and two of them ventilation tubes inside of the hatch, inside of the tank.

Q. Can you describe a little more particularly, Captain, those ventilators you have just spoken of?

A. Yes, I know the particulars.

Q. Well, where does each of these ventilators lead from, these two ventilators that ventilate No. 5 tank?

A. Two ventilators in hold No. 5 get fresh air through the shaft alleys and one of them presses hot air through the upper part of the deck. Those two ventilators have doors, and those doors, the important part, in hold No. 5. Both of those two

(Deposition of T. Ota.)

ventilators in hold No. 5 and each and every one of them, has one door on each and every one of those tubes. The size of the door is five feet high and twenty-two inches in width.

Q. Let me see if I understand that: On each ventilator that leads up from the shaft alley to the upper deck is a door in tank 5, is that right?

Mr. McKEON.—Just a minute. I object to that question on the ground that it is not what the witness testified and is leading.

Mr. KNIGHT.—I will withdraw that question, then.

Q. How many shaft alleys are there?

A. Two shaft alleys on the steamer, both underneath of the place where the cocoanut oil was stored only one alley.

Q. And how many shafts? A. Two.

Q. One port and one starboard?

A. If you go a little further to the end of the steamer it is as you say. [170]

Q. Is there a shaft leading from the starboard side of the engine to the propeller? A. Yes, sir.

Q. And is there a shaft leading from the port side of the engine to another propeller?

Q. How many shaft alleys are there leading from the engine-room back to the propellers?

A. There are two, but around the engine-room there is a big space aft of the engine-room.

Q. Let me see that I understand: There is a big space aft of the engine-room and then there are two alleys leading to the propellers; is that right?



(Deposition of T. Ota.)

Mr. McKEON.—Commencing at that place.

A. Yes, sir.

Mr. KNIGHT.—Q. What is the space under No. 5; how is the space under No. 5 occupied?

A. Shaft alley.

Q. And what is the place known as thrust recess; for what purpose is that opening or space used?

A. That belongs to the engine department and I cannot explain very well.

Mr. McKEON.—Q. No shaft alley runs through that?

A. Yes; it says "shaft alley," but there are little outsides in there.

Mr. KNIGHT.—Q. Is all this space aft of the engine-room down to the bulkhead which separates the 7 and 8 holds—is all that space open?

A. Yes, sir. It is all open space, and you can only come in from the engine-room.

Q. You said that there were two ventilators that led from the shaft alley through No. 5 tank to the upper deck; is that correct? A. Yes, sir.

Q. Did those ventilators have any opening into No. 5 tank? [171] A. Yes, sir, they are.

Q. What are those openings; what was the size of those openings?

A. As I have testified before, those doors are twenty-two inches in width and five feet in height.

Q. Did each ventilator have a door of similar size? A. Yes, sir.

Q. When each door was opened, state whether or not any air would come into No. 5 tank?

(Deposition of T. Ota.)

A. It is made in such way that one of them brings in fresh air from outside while another one sends up all the hot air from that hold.

Q. Answer the question. Do you put the questions as I put them to you? Ask the captain if those doors are open if air comes through the ventilator?

A. What do you mean; do you mean that air comes?

Q. Does air come through that ventilator if the door is open? A. Yes, sir.

Q. Where does the air come from?

A. From the outside.

Q. But does it come through the shaft alley and up the ventilator or does it come from the outside and down the ventilator?

A. Sometimes in most of the cases the cold air comes through the shaft alley, but sometimes on account of the atmosphere and the weather during the voyage the air comes directly from outside into this ventilating tube.

Q. Then does it depend upon the atmosphere outside as to the direction from which the air gets into tank No. 5? Do you understand the question—does it depend on the atmosphere outside as to the direction from which the air comes into No. 5 tank?

A. I cannot of course tell which one draws air from outside and which one gives out air from hold No. 5, but at any rate it depends on the outside atmosphere during the voyage, and one of them [172] at any rate draws air from outside and gives

(Deposition of T. Ota.)

out hot air from other tubes.

Q. Does one ventilator draw the air from the shaft alley?

A. Yes, cold air from the shaft alley; then send up to the upper deck. In that case this door which I have testified, twenty-two inches in width and five feet in height, gives plenty of cold air into hold No. 5 and hot air also goes out from the same opening on the other tube.

Q. Hot air from No. 5, or hot air from where?

A. I cannot say definitely that it is the hot air, but I say that the air that remained there will go out through other tubes in hold No. 5.

Q. Oh, the air that remains in No. 5 goes out, do I understand—goes out through another ventilator?

A. I mean that one ventilator sends up cold air from hold No. 5.

Q. Now, what does the other ventilator do?

A. It largely depends upon where you are staying. Sometimes, of course, when the temperature changes, the cold air comes into hold No. 5 from the outside, but it often occurs that cold air comes from the shaft alley; it largely depends on the atmosphere outside.

Q. What is the condition of the air in the shaft alley?

A. The condition of the air in the shaft alley is always circulating.

Q. When the vessel is at sea state whether the air in the shaft alley is warm or is cool?

A. It is always cool.

(Deposition of T. Ota.)

Q. State whether or not there are any other ventilators further aft than the one we have been referring to leading from the deck to the shaft alley?

A. Yes, sir, there are quite many.

Q. And state whether or not air gets to the shaft alley from those ventilators?

A. Yes, sir. There is plenty of air [173] that comes in that almost makes a person feel cold.

Q. Captain, do I understand that air comes from the outside down through one of these or some of these other ventilators down into the shaft alley?

A. Yes, sir.

Q. What is the size of the two ventilators that go through tank 5?

Mr. McKEON.—I object to that question on the ground that the witness has not stated that two ventilators go through tank 5.

Mr. KNIGHT.—I will withdraw that question.

Mr. McKEON.—Hold 5.

Mr. KNIGHT.—Q. Is tank 5 the place where some of this oil was stowed?

A. You mean when it was loaded?

Q. When the cocoanut oil was loaded?

A. Yes, sir.

Q. State whether or not tank 5 is a part of hold 5?

A. Yes, sir. We do not call it "Tank 5" at all; we call it hold 5. Do I understand you to say that these two ventilators pass through hold 5 where some of the barrels of oil were stowed?

A. Do you mean the ventilators?

Q. The ventilators leading up.

(Deposition of T. Ota.)

A. You must understand there are four ventilators in hatch No. 5; in hold No. 5 there are two, which are some of those four.

Q. Tell the captain when I refer to tank 5 I refer to that part of hold 5 that contains these barrels of cocoanut oil, so that he will understand?

A. You understand that hatch No. 5 also contains hold No. 5. I want it clear that there are four ways in getting air into No. 5, and two of them were in No. 5 where the cocoanut oil was loaded.

Q. I am directing all questions entirely to that part of hold No. 5 where the cocoanut oil was stowed, and I have reference to that part of the hold where the cocoanut oil was stowed?

A. Yes, I understand now; but I want you to understand there are [174] not only two ventilators, but there are also four in hatch No. 5.

Q. Now, speaking of hold No. 5 where the cocoanut oil is, were there two ventilators going through that hold, that part of the hold, that hold 5 where the cocoanut oil was stowed—going through the hold? I want only to designate that part of hold 5 where the cocoanut oil was stowed; I am asking the captain now about that part of the hold, no other part of the vessel?

A. I understand now, but please understand that there are four ways in hold No. 5.

Q. Now, then, were there two ventilators going through that hold No. 5 from the shaft alley to the upper deck? I want to see that we are using the same expression; only referring to this—now, what

(Deposition of T. Ota.)

do you call this little space there (referring to the place marked with a cross inside of a circle); what do you call that little space, Captain? A. 5.

Q. 5 what? A. 5 hold.

Q. Are there two ventilators leading through 5 hold from the shaft alley to the upper deck?

A. You see, the captain refers to other places.

Q. I do not want that.

A. There are two ventilators, but I have to mention the other two for the reason that the air comes in through the other two in connection with hold No. 5.

Q. Will you tell the captain I am going to get to that in a few minutes? Now, Captain, will you answer whether or not there are two ventilators leading from hold No. 5 through the shaft alley to the upper deck? A. Yes, sir.

Q. And those are the two ventilators each of which has the door that you have spoken of?

A. Yes, sir.

Q. Now, Captain, you spoke of two other ventilators; where are those two other ventilators you spoke of? [175]

A. Right here (indicating).

Q. Now, then, the captain refers to the cargo space immediately aft of the hold 5 to which he has been referring and which is marked by the cross surrounded by a circle. Then, there are two other ventilators in that place, are there, Captain?

A. Yes, sir.

Q. Where do they lead from?

(Deposition of T. Ota.)

A. The air from—

Q. Answer the question; where do they lead from; where does the ventilator lead from and where does it finish? I do not want anything about the air?

A. From the upper deck to down here, to the hold.

Q. What air circulates in those two ventilators?

A. Circulates in hatch No. 5 all over.

Q. Where does the air come from in those ventilators? A. Atmosphere.

Q. And it leads down from the atmosphere?

A. Yes, sir.

Q. Now, do you know what is the size of each of those two ventilators that you have just spoken of, the size of those two ventilators that he has just spoken of, leading down from the outside?

A. Each of those ventilators is more than one foot and a half in diameter.

Q. They are round, are they? A. Round.

Q. Have those ventilators that you have just been speaking of openings that allow the air to go through the different parts of the deck?

A. Yes. That is the place where the air comes in; that is the head of the ventilator.

Q. Does that ventilator extend down below that compartment? This blue-print shows that it only goes—what is that—the orlop-deck?

A. This ventilator comes down here. It is right as it shows on the print. This is where it ought to be, [176] because this is the place where all the air circulates through the holds through the hatch.

Q. How does the air get through the shaft alley

(Deposition of T. Ota.)

through the compartment which is marked as having a capacity of 703 tons?

A. The air in the shaft alley, it cools the bottom of this hold, but it does not get up at all.

Q. Do you know, Captain, the size of the upper 5 hold, where some of these barrels of cocoanut oil were stowed? A. Yes, sir, I do.

Q. Will you give the size, Captain? If you cannot remember, if you have a memorandum, if you know it is correct, you can use that.

A. 28 feet, 4 inches in width, and fore and aft 24 feet 2 inches, and the height 9 feet, 7 inches.

Q. What is the total width of the ship at that No. 5 hold? A. 62 feet.

Q. Captain, was there anything between the sides of this No. 5 hold and the skin of the ship?

A. In order to give air for that space there is wood around one side of the hold No. 5.

Q. There is wood for an air space?

A. On one side we have air space that is between the skin of the ship and the wood.

Q. But where is the fresh-water tank?

A. Two sides of hold No. 5 where the cocoanut oil was stowed are fresh-water tanks.

Q. There was a fresh-water tank on each side of hold No. 5 and between the hold and the skin of the ship? A. Yes, sir, on both sides.

Q. What was the number of the voyage upon which this cocoanut oil was taken from Manila to San Francisco?

A. Voyage No. 4 home. [177]



(Deposition of T. Ota.)

Q. Now, on that voyage were the fresh-water tanks used for storing the fresh water used on the vessel?

A. Both sides the tanks were filled with water and supplied with fresh water.

Q. Where is the ice kept on the steamer?

A. There is an ice chamber on the upper portion of hold No. 5.

Q. State whether or not the space for the storage of ice stretches across the vessel at that point above each of the water-tanks?     A. Yes, sir.

Q. State whether or not the temperature of the water in the fresh-water tanks was affected by the operation of the engines on the steamer's homeward voyage.     A. No, sir.

Q. Is there a bulkhead just aft of the engine-room?     A. Yes, sir.

Q. Does it extend from one side of the vessel to the other?

A. What do you mean by one side?

Q. From one skin to the other, from port to starboard, except as to the part occupied by the thrust recess?     A. Yes, sir.

Q. Do you know the thickness of that bulkhead?

A. I cannot give you the exact thickness, but approximately it is a little more than half an inch.

Q. In hold 5 will you state whether there was a wooden bulkhead on the inside?     A. Yes, sir.

Q. State how near this wooden bulkhead was to the steel bulkhead just aft the engine-room.

A. About one foot.

(Deposition of T. Ota.)

Q. That is, the wooden bulkhead was about one foot from the steel bulkhead?

A. From the steel bulkhead.

Q. That separated the engine-room from the hold? A. You mean from that steel bulkhead?

Q. Yes, the steel bulkhead?

A. The air space is about [178] 91½ inches and the thickness of the wood is about 2 inches and a quarter.

Q. Then, as I understand it, there is the steel engine-room bulkhead, then comes a space of about 91½ inches, then comes a wooden bulkhead about 2 inches and a quarter in thickness; is that correct?

A. Yes, sir.

Q. Captain, do you know where the ice-making machinery is on the vessel?

A. I cannot tell you the exact position where this engine is situated, but if you desire to know I can point out about where this engine is in place at the present time.

Q. Now, Captain, do you know how much water you drew when you left Manila bound for Hong-kong on this voyage; how much water was the vessel drawing when she left Manila?

A. I don't remember, so I shall refer you to the log-book.

Q. Was the log-book kept by the chief officer under your direction, Captain? A. Yes, sir.

Q. Now, will you look at the log to refresh your memory and state what was the draft of the "Korea Maru" forward and aft on leaving Manila; July

(Deposition of T. Ota.)

7th or 8th, I think it was, Captain, when you left?

A. 26 feet and 6 inches aft and the front part of the steamer 21 feet.

Q. Captain, what draft did you have when you left Hongkong? You left at that time about the 17th or 19th?

A. The front part 23 feet 3 inches and 25 feet 3 inches aft.

Q. Captain, was that about your draft on the way over on the entire voyage; was that about the amount of water you were drawing?

A. No, sir, it is not so; it is a little heavier.

Q. You were drawing more water?

A. Much more.

Q. Now, Captain, when you were drawing 26 feet of water about how [179] far on the side of the vessel, referring to this hold No. 5, would by your water line?

A. The place where the cocoanut oil was loaded is about 5 feet below water level.

Q. Captain, what is the tendency of the water on the outside of a vessel in such climate as you had in going from Manila to San Francisco; does the water tend to heat or to cool the hold?

Mr. McKEON.—I object to that on the ground it is leading and suggestive.

A. Cooling inside of the hold.

Mr. KNIGHT.—Q. Ordinarily, Captain, under the circumstances that I have stated, as you go down deeper into the hold, does it get warmer or does it get cooler? A. Cooler as you go down.

(Deposition of T. Ota.)

Q. For what reason?

A. The deeper you go in the sea the cooler you get.

Q. State, Captain, what was the temperature on your voyage from Manila to Hongkong and from Hongkong by way of Japanese ports across the Pacific?

A. I cannot give you the degrees of heat, but it was the hottest season in the year.

Q. How did that voyage, as far as the heat is concerned, compare with other voyages, other like voyages, that is, other voyages from Manila to Hongkong to San Francisco?

A. Hot and warm all day long.

Q. How does it compare—was it colder or hotter?

A. Much hotter than other voyages.

Q. Does your log-book show the temperature on the different days taken on the bridge?

A. My log-book shows the temperature, which was taken every four hours.

Q. Will you refer to your log-book, Captain, or, if you can state it, you need not refer to it, and give some of the temperatures [180] on that voyage?

A. On July 8th, that is, the date of sailing from Manila, was 87 degrees.

Q. That is Fahrenheit, I take it? A. Yes, sir.

Q. At what hour?

A. That was 12 o'clock, and the hottest on that day.

Q. You can give us the highest and the lowest.

A. To Hongkong or to Japan?

(Deposition of T. Ota.)

Q. To Japan, or, put it this way—

Mr. McKEON.—(Reading:.) On July 8th 87 was the hottest and 74 the lowest.

Mr. KNIGHT.—Q. At what hour was it 74?

A. 4 o'clock in the morning.

Q. Now, Captain, what was the hottest weather that you encountered, on what days did the temperature go the highest?

Mr. McKEON.—(Reading from book.) The 9th is 87; 89 is the 10th, the hottest; the 11th is 93; 12th is 93; 13th, 94; 14th, 87; 15th, 81; the 16th is 79; 17th, 82; 18th, 75.

Mr. KNIGHT.—Are these taken at the same hour always?

Mr. McKEON.—I am taking the highest every day; they are all in the middle of the day. The 19th is 83; the 20th, 81; and that is at 4 o'clock in the afternoon; the 21st, 85, and that was 4 o'clock in the afternoon. The 22d, 82, 4 o'clock in the afternoon; the 23d, 87, at 4 o'clock in the afternoon; the 24th, 82, at 4 o'clock; the 25th, 85; the 26th, 89; the 27th, 87; the 28th, 80, at midnight; 29th, 82, at 8 o'clock at night; the 30th, 83, at mid-day, noon; the 31st, 80, noon; August 1st, noon—

Mr. KNIGHT.—Q. I think, instead of taking a lot of time going through there, I will ask you this: How high did the temperature get on your voyage?

A. I should think about 94 was the hottest day we got on the voyage. [181]

Q. Captain, did you see the barrels of cocoanut oil when they were discharged from the vessel here?

(Deposition of T. Ota.)

A. Yes, sir, I saw them.

Q. Were any of them broken?

A. Not that I know of.

Q. What was the character of the hatch covering on hold 5? A. You mean of what material?

Q. Yes, how was hold 5 covered?

A. We did not put anything on hold No. 5, and covered it with wood; we have a regular wood cover for the hold.

Q. And hold 5 was covered with a wooden cover on that voyage, is that right? A. Yes.

Q. How was that hold 5 drained; how did any fluid get from it?

A. There is a means that runs down from both sides to a tunnel that goes to the bilges.

Q. There were scuppers leading from hold 5 on both sides to the bilges, were there, in the shaft alley? A. Yes.

Q. And then the pumps took up the fluid there in the shaft alley and pumped it overboard?

A. Yes, all the waters and other fluids, everything come down to the bilges, and then pumped it out by means of a pump.

Q. At any time were the bilge pumps used for any unusual amount of fluid on the voyage; pump any unusual amount of fluid from the bilges?

A. Nothing happened in the voyage.

Q. Your log shows the height of the water in the bilges, does it not, where the pump is?

Mr. McKEON.—Are you going to introduce the log-book?

(Deposition of T. Ota.)

Mr. KNIGHT.—I do not think there is anything in the log either way. If there is anything, we will let it go in.

Mr. McKEON.—You will keep the log here so that we can refer to it later? [182]

Mr. KNIGHT.—Q. Is this log-book used on the “Korea”? A. No, we do not use this very one.

Q. Then this log-book can be left here?

A. We have the bilges height.

Q. I do not care about the bilges height, but the depth of the bilge water at any time was not unusual, was it?

A. No. Nothing happened like that. I can only say that there was nothing unusual, but as to the height of the water on each and every day this book can be referred to, or call in the chief mate.

Q. I do not think there is anything in it. Captain, could this be left in the office of the company, or do your regulations require you to have that always on board?

A. By the law I have to have it in my possession. By the Japanese law it is required to be in the possession of the Captain.

Mr. McKEON.—Q. You do not have to have that with you; you have another one?

A. I have to have this, and if you make arrangements with the manager of the concern and make arrangements with him, I have nothing to do with it at all.

Mr. KNIGHT.—Q. Captain, I ask you if you can identify this as being the correct stowage plan of the

(Deposition of T. Ota.)

Toyo Kisen Kaisha on that homeward voyage 4?

A. Yes.

Q. And the oil that is referred to is the oil, where it is marked "Oil," and then further aft where it is marked "Oil," to show where the oil is stowed?

A. Yes, sir.

Mr. KNIGHT.—In connection with the captain's testimony I will offer this stowage plan and this blue-print upon which the captain has testified.

I think that is all, Captain.

(The blue-print is received by the Notary and by him marked "Claimant's Exhibit No. 1," and the stowage plan is received and marked by said Notary "Claimant's Exhibit No. 2.") [183]

Cross-examination.

(By Mr. McKEON.)

Q. Who made up this stowage plan?

A. The chief officer.

Q. The man that is not with the ship now?

A. No, he is away.

Q. You do not know anything personally about it being accurate, do you?

A. Yes, I do. Do you mean concerning the oil?

Q. No, I am talking about this stowage plan.

A. That was first made by the chief officer and it has my O. K., and if I answer I know.

Q. How were these barrels of oil stowed in tank No. 5?

A. Hold No. 5 is its name. We placed wooden dunnage on the floor of the hold No. 5, and then we



(Deposition of T. Ota.)

placed the barrels of oil, three tier.

Q. Three on top of each other?

A. Yes, three tiers, and there was wooden dunnage between the barrels.

Q. Were the barrels stowed up on their ends or were they lying down on their sides?

A. We always stow them on the side, never up and down.

Q. Were they stowed athwartships or fore and aft? A. Fore and aft.

Q. How many tiers across the ship were there; they were three high, but how many tiers athwartship?

A. I do not know how many tiers; I don't remember how many barrels were across.

Q. Did they reach from one side of the tank to the other? A. Yes, sir, from one side to another.

Q. Was that tank loaded to capacity with that oil? A. Yes, sir.

Q. Do you remember the sizes of those barrels at all? [184] A. No, I don't remember.

Q. Is that compartment in which that cargo was stowed also referred to as a tank? A. Hold No. 5.

Q. No; that compartment that that cargo was stowed in in No. 5 hold, is that referred to as a tank?

A. Not that I know of. It is just like a tank; you might call it, but it is never known as a tank.

Q. That is what it is in shape; it is a tank, isn't it, a steel tank?

A. It is not a tank at all, and there are also

(Deposition of T. Ota.)

wooden bulkheads on the side, so it is not a tank in any sense of the term.

Q. What is the purpose of putting a wooden bulkhead between the engine-room and that compartment?

A. This is to prevent that any cargo that comes into this hold would not touch directly to the steel. In most of the holds you will find that wooden bulkhead for this purpose.

Q. It is just used then as a cargo batten?

A. Cargo batten.

Q. Is it a permanent bulkhead?

A. Yes; almost permanent purpose.

Q. What is the means of access into No. 5 hold where this cargo was stowed—how do you get into it?

A. By means of machinery situated in the lower part of the—

Q. I do not mean what you use to get in there, but how do you get in there; what cargo hatch do you use; what cargo hatch do you use to get into cargo 5 tank?

A. When hatch No. 5 is open and we can put in cargo inside of the hold No. 5.

Q. What do you do—load these barrels through No. 5 down past the main deck and past the orlop-deck? A. Yes.

Q. And then truck the cargo from the floor of the hatch over into [185] the opening into No. 5 tank, and load it that way?

A. The boat at that time was near the pier and

(Deposition of T. Ota.)

by means of winches those barrels were placed into hold No. 5 from the land from outside the steamer.

Q. You do not release those barrels from the cargo fall directly into No. 5 tank, do you?

A. Directly into the hold No. 5 without stopping anywhere.

Q. Captain, that cargo space is immediately abaft the engine-room, isn't it? Cannot he answer these questions yes or no? Tell him if he can answer these questions yes or no it will save a lot of time.

A. There is a space between the engine-room and this hold.

Q. Is there any cargo compartment between the engine-room and No. 5 tank?

A. No cargo compartment.

Q. Cargo batten? A. Yes.

Q. There is nothing between the engine-room and this cargo space in which this oil was stowed other than the steel bulkhead and the cargo batten?

A. Yes.

Q. What is the cargo compartment, Captain, immediately on top of No. 5 tank? A. Cargo space.

Q. Do you know what distance there is between the top of No. 5 tank and the top of the cargo space immediately above No. 5 hold?

A. I can't give you the exact size, but I should think it is about 8 feet.

Q. You can walk very conveniently there?

A. Yes.

Q. And that space, you say, runs the whole length of No. 5 hold? A. Yes, sir.

(Deposition of T. Ota.)

Q. In No. 5 hold, Captain, there are a number of compartments, are there not? A. Yes, sir.

Q. No. 5 that you have been referring to as a tank is a compartment in itself completely enclosed, is it not? [186]

A. Yes, the same as the one next to it.

Q. And all of those various compartments are divided off by bulkheads, are they not? A. Yes.

Q. And there is one ventilator from the atmosphere into No. 5 hold, isn't there—one intake?

A. There are two ventilators from outside for hold No. 5.

Q. Does this blue-print show one or two ventilators from the outside into No. 5 hold?

A. He says never mind about the blue-print, you can come down and see the ship yourself.

Q. That does not answer the question. Ask him to say yes or no?

Mr. KNIGHT.—I object to that on the ground that the blue-print speaks for itself as to what it shows and what it does not. Ask him what the fact is.

Mr. McKEON.—Q. Then this blue-print is not correct, Captain, is it?

A. There are two, but this blue-print does not show it; it might be so.

Q. Is the blue-print correct or is it not correct?

A. I cannot say yes or no for the reason that if it does not show, it might be wrong.

Q. Then you do not know whether you have two ventilators in No. 5 or not, do you?

(Deposition of T. Ota.)

A. There are two in the room, and he can come down and see it.

Q. Where does the other ventilator that you say opens into No. 5 lie with respect to the present ventilator; is it right alongside of it—the one that shows on the blue-print?

A. It commences from here and comes out here.

Q. They are right together, then, alongside of one another, are they—that one there and one adjoining it? A. There is another one on the other side.

Q. On the port side of the ship; this is the star-board ventilator [187] that shows on the blue-print? A. Yes, and it must be on the port side.

Q. And that is a pipe that runs down through the main-deck and through the orlop-deck down into the shaft alley?

A. No, this ventilator does not come down as far as the shaft alley.

Q. It comes down as far as the shaft alley?

A. No, it does not.

Mr. KNIGHT.—Let it appear in the notes that counsel is now referring to the ventilator leading into No. 5 and shown on this blue-print.

Mr. McKEON.—Q. Where does it stop, Captain?

A. You can see, as it is on the print, it stops at the upper part of the hold.

Q. What deck? A. The orlop-deck.

Q. The orlop-deck is above No. 5 tank, isn't it?

A. No, we do not have such place.

Q. What place are you talking about—the tank?

A. What do you mean by "tank," any way?

(Deposition of T. Ota.)

Q. I do not want to confuse the Captain. Tell him I am referring to the place where the oil was stowed in upper 5 hold when I say the tank.

A. You can see it very plainly on the print.

Q. Captain, the ventilator or the pipe from the ventilator shown on this blue-print stops at the orlop-deck, doesn't it?     A. Yes.

Q. And the orlop-deck is above the place where this oil was stowed, is it not—this is on top of this (indicating)?     A. Yes.

Q. And the other ventilator that you say leads into No. 5, is in a similar position, and stops at a similar place, does it not, on the [188] port side of the vessel?     A. Yes, sir.

Q. Which of them takes out from the hold the hot air of the hold?

A. As I have testified previously, it largely depends upon the atmosphere; sometimes one of them draws in cool air and at others it gives hot air, and alternates upon the condition of the atmosphere.

Q. Does that all depend on which way the wind hits the ship, Captain?

A. Yes, it largely depends on the wind.

Q. Now, the purpose of that double system of ventilation, Captain, isn't it, is to make a perfect flow in one ventilator through the hold and out in the other ventilator on the opposite side?

A. Yes, sir. That is the reason I say it largely depends upon the condition of the atmosphere.

Q. It passes in one and passes through the hold and out the other, is that correct?

(Deposition of T. Ota.)

A. You must understand that the air that comes in from one ventilator tube, the same air would not go out, but air that has stayed in that space will go out in the other tube.

Q. But it is a circulation from one into the hold and from or out of the hold by means of the other one? A. Yes.

Q. Those ventilators that you are speaking of in No. 5 hold are in the extreme after end of No. 5 hold, aren't they?

Mr. KNIGHT.—That is, you refer to the ventilators other than those you have just been questioning about?

Mr. McKEON.—No. That is the question I am just directing him to.

A. No, it is not the extreme end of the hatch at all.

Q. About how far away from the extreme end of the hatch are those ventilators?

A. I should think it is more than six feet.

Q. And how long is the No. 5 hold? [189]

A. I don't remember.

Q. Fifty feet?

A. I can't tell; perhaps a little more than fifty feet.

Q. So that the cargo compartment to which we have been referring as No. 5 tank, in which was stowed this oil, takes up less than half of the forward space of No. 5 hold?

A. No, it does not take more than one-half.

Q. It takes less, I say.

(Deposition of T. Ota.)

A. Yes. I don't think it is more than one-third—about one-third.

Q. Where does the ventilating pipe enter No. 5 hold from the shaft alley? When I say No. 5 hold I mean the hole of No. 5 cargo compartment; when I say No. 5 tank I refer to the place where this oil was stowed in No. 5 hold.

A. Why, the air would not come in directly from the shaft alley.

Q. It would not? A. No.

Q. Then, there is no air entering into No. 5 hold from the shaft alley?

A. The air from the shaft alley only cools the bottom of the hold, but does not enter in.

Q. Immediately underneath the place that we call tank No. 5, in which was stowed this oil, is the engineer's quarters, isn't it—immediately below No. 5 tank? A. Yes.

Q. So that the thrust recess or engineer's quarters is not the shaft alley?

A. Yes, it is a part of the shaft alley.

Q. But it is not used for ventilating the bottom of No. 5 tank?

A. I said it is a part of the shaft alley because the pipe goes through there and also the cool air goes through there.

Q. But it does not ventilate the bottom of the No. 5 tank?

A. It cools the bottom of the hold No. 5.

Q. How does it cool the bottom of hold No. 5 if it is the crew's quarters?



(Deposition of T. Ota.)

A. That is the place where the engineers [190] come and get the cool air; naturally, the temperature there is pretty cool.

Mr. KNIGHT.—Q. Ask him if that is what he means by the engineers' quarters.

A. I mean the engineers' quarters, which is a part of the shaft alley.

Mr. McKEON.—Q. Engineers' quarters which is a part of the shaft alley?

Mr. KNIGHT.—I would like to know what "quarters" means—sleeping-place?

A. What is definition of engineers' quarters?

Mr. McKEON.—Q. That is what he wants him to give.

Mr. KNIGHT.—Q. What does he mean; counsel has asked him about engineers' quarters?

A. I did not use engineers' quarters at all. I thought you mean a place where engineers come around.

Mr. McKEON.—Q. No. Now, do you take the temperature of these various compartments regularly? A. Yes, sir, generally.

Mr. KNIGHT.—Do you mean of the tanks or—

Mr. McKEON.—The cargo compartments.

Q. How often?

A. For instance, those hatches and holds where there are ventilators, we remove the top of them in accordance with the atmosphere and also on the fine days we take off the hatch covers.

Q. That is the top hatch covers you are speaking of? A. Yes, these big hatch covers.

(Deposition of T. Ota.)

Q. That was not my question there. Will you read it, please? (Question read as follows: "Now, do you take the temperature of these various compartments regularly . . . Q. How often?") A. Yes, sir, generally. How frequently do you take the temperature of the [191] various cargo compartments?

A. I never take the temperature of the cargo at all.

Q. The holds?

A. The general practice is that we do not take the temperature of the holds, because there is no use of it at all.

Q. Then you do not know whether a hold has become heated or not, do you?

A. I go down there for inspection and although we do not take it by use of a thermometer, I can tell.

Q. How frequently did you go down on this particular voyage No. 4 to ascertain the temperature of hold No. 5?

A. I don't remember how often I went down there.

Q. Did you go down once or twice or three times?

A. On account of the cargo that was stowed down there I could not go inside of the hold No. 5. What he means by hold No. 5, he means tank. The cargo was stowed away up here, and that would not let me go in there.

Q. Cargo was stowed on top of hold No. 5?

A. Yes.

(Deposition of T. Ota.)

Q. So that you could not determine whether No. 5 tank was heated or not?

A. At that time I did not go down there so I could not give you the exact temperatures, but by the sea weather and the use of those two ventilators I know it was very cold.

Mr. McKEON.—I move that go out as not responsive.

Q. Then, as a matter of fact, you did not go down into No. 5 to determine whether that hold was heated or not?

A. It is not only the hold, but when the cargo is stowed on top of it, I cannot possibly go down and inspect the temperature.

Q. It is impossible to do it, Captain, the way the ship is loaded, isn't it?

A. Why, I did not go down there to inspect at all. I could not do it. But we did our best to remove [192] the top of the ventilators etc., and let the cool air come in.

Q. That was away up on top of the ship, the top deck? A. Yes.

Q. And the opening into No. 5 tank in which you loaded the barrels was covered over with hatch boards? A. Yes, it was covered up.

Q. With hatch boards?

A. With hatch boards, but it was not very tight.

Q. It was not tight? A. No.

Q. And on top of the hatch boards there was still cargo? A. There was some cargo.

Q. Was the place over which was placed these

(Deposition of T. Ota.)

hatch boards the only available opening into No. 5 tank?

A. Except the air that goes through the ventilators.

Q. Now, show me on blue-print No. 1 where a ventilator passes through No. 5 tank?

A. It goes up here.

Mr. KNIGHT.—The Captain refers to the top deck.

Mr. McKEON.—Q. Right abaft the smokestack.

A. I don't understand what that is.

Q. Well, show it this way, Captain; does a pipe pass up and down through No. 5 tank?

A. It goes up and down like this.

Mr. KNIGHT.—The Captain is pointing from the top deck down into No. 5 tank.

Mr. McKEON.—Q. Is there one or two pipes passing through No. 5 tank?

A. One on each side.

Q. On the port side and on the starboard side of No. 5 tank?     A. Yes .

Q. Now, what is there from this pipe—that is a solid pipe, isn't it?

Mr. KNIGHT.—What do you mean by a solid pipe? [193]

Mr. McKEON.—The ventilator is a solid pipe.

Mr. KNIGHT.—You mean without openings?

Mr. McKEON.—I mean the ventilator is a solid pipe with openings at various places.

Mr. KNIGHT.—Ask him what it is made of.

Mr. McKEON.—Strike that out. What is the

(Deposition of T. Ota.)

ventilator made of, Captain?

A. It is made of steel.

Q. A round steel in the shape of a pipe?

A. As I have testified, the door itself is 22 inches—

Q. I am not asking about the door.

Mr. KNIGHT.—He wants the shape of it; is it round or square? A. Square.

Mr. McKEON.—Q. And then it passes down from the top deck of the ship down through No. 5 down through the main deck, through the lower deck and through the orlop-deck? A. Yes, sir.

Q. Down through the No. 5 tank?

A. No. 5 tank.

Q. And then does it go down into the shaft alley?

A. No, to this deck, the bottom side of that tank.

Q. Then, the ventilator that leads down on the forward part of No. 5 hold goes down further than does the one on the after part of No. 5 hold?

A. Yes, it goes to this extent, that one stops here while this one goes deeper, to this extent.

Q. Does it work in the same manner as the after ventilators that you have already described?

A. They are different because these two ventilators in front have a mushroom head, and it is square right here—pointing at the tanks.

Q. Are those openings into those holds always open, Captain?

Mr. KNIGHT.—The doors.

A. It largely depends on the nature of the cargo.

(Deposition of T. Ota.)

Lots of time on the loading of oils they are open.  
[194]

Mr. McKEON.—Q. Why do you open them with oil cargo, Captain?

A. I don't know how it was, but they were open.

Q. Did you open them, Captain?

A. No, that is the place where the chief officer looks after.

Q. Then, you do not know yourself whether they were open or not, do you?

A. The chief officer told me that he opened the doors.

Mr. McKEON.—I move to strike that out on the ground it is hearsay.

Q. You say, Captain, that the doors of these ventilators are opened and closed depending upon the cargo that you load; is that the fact? A. Yes.

Q. Do you think that the doors were open at this time because you were loading oil in these compartments?

A. I should judge that they were open because the season was hot at that time.

Q. Then, you do not think that oil is cargo that requires ventilation?

A. Perhaps it is better for the oil to have doors open.

Q. You are not sure of that, though, Captain; you only think that is so?

A. I should judge it is better.

Q. In your opinion, is oil cargo that requires a great deal of ventilation?

(Deposition of T. Ota.)

Mr. KNIGHT.—I object to the question as being irrelevant, immaterial and incompetent, and not proper cross-examination,—as to what the captain's individual belief was as to the quantity of ventilation that the oil requires.

A. It largely depends upon the kinds of oils you accept as cargo, but any cocoanut oil, I think it is better to give air ventilation.

Mr. McKEON.—Q. Captain, was the cargo in No. 5 tank loaded right from the bottom of the compartment to the ceiling? [195]

A. It is absolutely impossible to do that for, as I have told you, we loaded for three tiers; in other words, I made only three tiers high.

Mr. KNIGHT.—Q. What was the space above the tops of the tiers?

A. I cannot give you definite number of feet, but as I have told you the height of the hold, so you can measure up the height of the size of the barrels and deduct the same.

Mr. McKEON.—Q. You do not know, Captain, do you?

A. I know there was plenty of space, but I cannot give you the number of feet.

Q. Were you down into No. 5 tank prior to the time they put the hatch covers on it after the oil was loaded?

A. No, I did not go in down there.

Q. So that you do not know anything about how the cargo was loaded in that hold?

A. Yes; I know there was plenty of space from

(Deposition of T. Ota.)

the top of the barrels to the ceiling, for the reason that the height of the hold is about nine feet, and judging from that standpoint there was plenty of space.

Q. But did you not see it, Captain?

A. You understand, I told you that I did not go down into the hold, but I looked at it.

Q. As a matter of fact, they were stowed five high, weren't they, Captain—five tiers high?

A. They were in three tiers, and the report, which should be the correct and proper one, was reported three tiers, from the chief officer.

Q. Then you get your information about the tiers from what the chief officer told you?

A. Yes, I read in the report of the chief officer, too.

Mr. McKEON.—I move to strike out the testimony of the witness upon the number of tiers and how the tiers of barrels of cargo [196] were stowed in No. 5 hold and the manner it was stowed, as hearsay.

Mr. KNIGHT.—The Captain said he looked down into the hold and saw how it was stowed.

Mr. McKEON.—Q. Captain, did you see the cargo that was in No. 5 tank before it was discharged at San Francisco? A. Yes, I saw them.

Q. What condition was it in?

A. I saw the three tiers at that time, even.

Mr. KNIGHT.—Q. You say you saw the three tiers at that time; what time do you refer to?

A. At the time of discharging the cargo.



(Deposition of T. Ota.)

Mr. McKEON.—Q. What condition were the barrels in then in the No. 5 tank?

A. As I saw them, the oil had perforated all through around the barrels.

Q. The hoops of the barrels—had they fallen off?

A. If I remember correctly, I did not see any hoops removed from the barrels.

Q. Did you see any oil about the floor of No. 5 tank?

A. I saw the presence of oil on the floor, but I did not see very much fluid.

Q. Did the floor of No. 5 tank show any evidence of being stained with oil?

A. Yes, I saw the presence of oil on the floor.

Q. As a matter of fact, you saved two cans of that oil, didn't you, Captain—scraped up from the floor of the tank?

A. Who do you mean by that?

Q. The ship? A. I did not see that.

Q. Did you ever hear anything about saving two cans of oil which had been scraped up on the floor of that ship when you arrived in San Francisco?  
[197]

Mr. KNIGHT.—I object to that question as calling for hearsay testimony, whether the captain had ever heard that anybody else had ever scraped up oil from that tank? A. I never heard of it.

Mr. McKEON.—Q. None of the oil that was in that room, in that tank No. 5, was saved during that voyage, was it?

A. I never even heard of it during the voyage.

(Deposition of T. Ota.)

Q. Are there scuppers leading out of No. 5 tank?

A. Yes, it goes to the bilges.

Q. Is it possible to open and close those scuppers?

A. Yes, it can be done. The scupper is always open so you can't do it, but at the bottom of the scupper you can do this thing.

Q. If oil ran out through the scuppers of No. 5 tank and on into the bilges, how would it get overboard?

A. What do you mean by getting it "overboard"?

Q. Off the ship.

A. When the bilge gets a certain height we have to pump out all the water contained there into the sea.

Q. And if there were any oil in that bilge you could see it, couldn't you?

A. I didn't see any oil.

Q. I am not asking if you did see it.

A. Understand we can never look at it because it contains all sorts of other waters, and the means of discharge is into the sea; that is, you understand, the bottom of the ship is inside of the sea, and it goes out from that door into the sea, entirely outside.

Q. Well, if the barrels in No. 5 tank leaked and the oil left those barrels and ran over the floor of No. 5 tank, how would that oil get off the ship; give an outline of what course it would take in getting out?

A. If there is any fluid in tank No. 5 it would go down into a scupper that would lead into the

(Deposition of T. Ota.)

bilges, [198] and then be discharged by means of pumps from that portion of the steamer that is below sea water level into the sea.

Q. And you can see what you are pumping?

A. No, you can never see what is done at all.

Q. Ever sound your bilges? A. About twice.

Q. How do you do that?

A. There is a pipe that goes through the lower portion of the steamer and you can find out the height by putting in some scale inside of the tube.

Q. And after you put the scale into the pipe you look at the scale, don't you, to see what it measures? A. Yes, sir.

Q. Upon arrival in San Francisco, Captain, what was the condition of the barrels in No. 5?

A. The conditions were bad, but on account of the thinness of the wood which made the barrels, the contents was all perforated through the wood all over the barrels.

Mr. KNIGHT.—Was that the barrels in the after part of No. 7?

Mr. McKEON.—No, No. 5. I move to strike out the conclusion of the Captain as to the reason of the leaking, on the ground it is not responsive.

Q. Was the floor covered with oil at that time, Captain? A. Yes, I saw the presence of oil.

Q. How many times did you go down into No. 5 tank after you arrived in San Francisco?

A. I did not go inside of the tank, but I have looked down quite often from the deck above.

Q. What was the condition of the cargo in No. 7

(Deposition of T. Ota.)

hold when you arrived in San Francisco?

A. The conditions were good.

Q. And how far away is No. 7 hold from the engine-room—from here to here, how far?

A. 150 feet.

Q. 150 feet?      A. Yes.

Q. The place where the oil was stowed in No. 7 hold was the same height above the bottom of the ship as was the place where the oil [199] was stowed in No. 5 tank, was it not?

A. Why, it might be the same height, but the space in hold No. 7 is much smaller and the number of the barrels in hold No. 7 was much less than five.

Q. I appreciate that, but you have not answered the question. Will you read the question again?

(Question read.)

A. I do not see any difference at all. Perhaps it might be the same. I never measured it myself.

Q. The difference from the keel to the place where the oil was stowed in No. 7 is identical with the distance from the keel to the place where the oil was stowed in No. 5?

A. I should judge it is about the same.

Q. How many ventilators have you in No. 7, Captain?      A. Two ventilators.

Q. Why do you put two ventilators in No. 7 and four in No. 5?

A. Because the number of ventilators is according to the size of the hatches and holds.

Q. Was there anything else stowed in No. 5 tank with the oil?

(Deposition of T. Ota.)

A. We did not put anything at all in tank No. 5.

Q. Other than the oil? A. Other than the oil.

Q. Have you always carried cargo in tank No. 5?

Mr. KNIGHT.—I object to the question as incompetent, irrelevant and immaterial.

A. All the time.

Mr. McKEON.—Q. Captain, if you had closed the scuppers leading out from No. 5 tank, would you have been able to save any oil that may have leaked out of the barrels loaded in that compartment?

A. In the first place, I didn't know that the oil was coming down.

Mr. McKEON.—That is not the question. [200]

Mr. KNIGHT.—I want to get the rest of the answer.

A. And moreover it is impossible to finish the scuppers.

Q. What do you mean? A. Close the scuppers.

Q. Why?

A. A scupper is made in such a way that you cannot close it.

Mr. McKEON.—Q. Is a scupper customarily aboard ship so that you cannot close it? A. Yes.

Q. Are all the scuppers aboard the "Korea Maru" such that you cannot close them?

A. Not only on the "Korea Maru," but on all other ships, the scuppers could never be closed—on most of the ships.

Q. Captain, is it hotter alongside of the engine-room than it is in No. 7 hold?

(Deposition of T. Ota.)

Mr. KNIGHT.—I object to that question as being improper cross-examination and being indefinite as to what part of the engine-room is referred to.

Mr. McKEON.—Q. Immediately abaft the engine-room in any cargo compartment below the orlop-deck?

Mr. KNIGHT.—And I further object on the ground that the conditions are not stated; that is, the condition as to ventilation and the conditions surrounding that tank 5; that is, the condition of the fresh-water tank on each side extending up and beyond the height of the ceiling of the No. 5 tank.

A. On account of the presence of ventilators in No. 5 it is not hotter.

Mr. McKEON.—Q. That was not the question I asked. In your opinion, Captain, is it hotter immediately abaft the engine-room or engine-rooms than it is in No. 7 hold?

Mr. KNIGHT.—Same objection.

A. Why, in this particular boat I should think that the hold next [201] to the engine must be this No. 5, but as I have spoken, on account of the presence of the fresh-water tanks around the sides and also a little air space between the wood and the bulkhead and also two ventilators, it is not hotter than hatch No. 7.

Mr. McKEON.—Q. Do you load any cargo in bunker No. 1 immediately forward of the engine-room, Captain?

Mr. KNIGHT.—Coal-bunker, I suppose?

(Deposition of T. Ota.)

Mr. McKEON.—Coal-bunker.

A. Nothing but coal.

Q. Did you make any examination of these barrels other than standing on top of the orlop-deck and looking down into the No. 5 tank?

A. Yes; I made an examination on the barrels which were discharged from the ship at San Francisco.

Q. Did they have hoops around them?

A. Yes, each and every one of them I examined.

Q. How many hoops did these barrels have?

A. I did not count the number of hoops on each and every barrel, but I should judge there were about six or seven of them on each and every barrel.

Q. On this trip, Captain, did you ever have any weather that necessitated closing up the ventilators?

A. Voyage No. 4?

Q. The one that the damage was done on?

A. On account of the extreme hot weather we never closed the ventilators at all.

Q. During the summer months, Captain, do you or do you not expect hot weather on a voyage from Manila to San Francisco?

A. Yes, I do expect it.

Q. Captain, on your direct examination you said that you first saw these barrels at loading and in another place you said that you saw them in the warehouse; how many times did you see them prior [202] to your departure from Manila?

A. You understand that the ship arrives at

(Deposition of T. Ota.)

Manila at the wharf and in front of the waterfront is a big warehouse and in front of these houses there were standing these barrels, and, in fact, I have seen them almost every day.

Q. Waiting for shipment, were they?

A. I should think so.

Q. How were they transported to the ship?

A. They were loaded inside of the hold by means of cranes.

Q. I did not ask that. How were they brought to the ship?

A. No means at all. Here is the warehouse and in front of those warehouses there were a number of barrels, and alongside of that was the ship, and they were simply brought inside of the ship by means of the cranes.

Q. The weather was cloudy that day, wasn't it?

A. I don't know whether it was cloudy or not, but it was extremely hot.

Q. Refer to your log, Captain, of the day you left Manila; what does it say in reference to the condition of the weather?

A. Well, it says "cloudy," so it might be clouded.

Q. It was or maybe it was?

A. It was. I am not supposed to remember whether it was cloudy or sunny. It was a hot day.

Q. If it appears in your log it was cloudy, it must have been cloudy, isn't that the fact?

A. Of course.

Q. That warehouse that you speak of, Captain, is a stone warehouse, isn't it?



(Deposition of T. Ota.)

A. Almost exactly the same as the buildings you have in this port.

Q. Except the floor, cement?

A. Mostly wood, but a few cement floors, too.

Mr. KNIGHT.—Q. What are the sides of the building—wood; not the floor, but the sides?

A. Iron. [203]

Q. Iron sides?

A. Yes; it looks like iron; on the roof, galvanized tin, or iron.

Mr. McKEON.—Q. Captain, in receiving cargo aboard your ship is it or is it not customary to note on the bill of lading the condition of the cargo as to whether it is in bad condition or not?

A. I do think it is, but you understand that the captain has nothing to do with the bill of lading, nor signs any one of them. It is the freight clerk's business to attend to that.

Q. Do you know how many barrels were empty when you arrived here in San Francisco, Captain?

A. I do not know.

Q. Do you know whether any oil escaped from the barrels in No. 5, Captain?

A. What do you mean by escaped oil? I did not notice it until the discharging of the cargo at San Francisco.

Q. What was the question.

(Question read.)

A. I do not know whether any oil escaped from the barrels or not, but I noticed some stains and some oils on the floor.

(Deposition of T. Ota.)

Q. Well, upon arrival in San Francisco you found that this oil had escaped, didn't you?

A. Why, I am not positively sure whether it escaped or not. All I can say is that oil was perforating through the wood of the barrels. That is all I noticed.

Q. It went into No. 5 tank?

A. In didn't go inside of the hold No. 5.

Q. Where else would it go, Captain?

A. I mean by that that I personally did not go down.

Q. I am trying to find out where it would go.

Mr. KNIGHT.—I object to that question on the ground that he has already testified that anything that got out of hold No. 5 went through the scuppers and into the bilges and when the bilges got a certain depth it would be pumped overboard.  
[204]

Mr. McKEON.—I want to get the course of it, just exactly where it would go. I will put the question this way:

Q. Were the scuppers that you speak of in the bottom of No. 5 on both the starboard and the port side of No. 5?

A. It could not be stopped. It is always open.

Q. I did not ask that. Will you read the question?

(Question read.)

A. Yes.

Q. Then, there was a space between the fresh-water tank and No. 5 tank; is that the fact?

(Deposition of T. Ota.)

A. Just about the place, not exactly.

Q. Well, there was a space there, wasn't there?

A. Yes.

Mr. KNIGHT.—A space between the fresh-water tanks and No. 5 tank?

A. Yes.

Mr. McKEON.—Q. On both the starboard and port sides.

A. Just both sides of the skin of the ship.

Mr. KNIGHT.—I do not think he understands it. You want to know if there is a space between the fresh-water tanks and No. 5?

Mr. McKEON.—Q. Captain, is there a space between the fresh-water tanks and No. 5—that is, is there a space between the fresh-water tanks and tank No. 5?

A. Yes.

Q. There is a space?

A. I don't know—barricaded by wood.

Mr. KNIGHT.—Q. There is a barricade, as you say, or a bulkhead of wood on each side?

A. Yes.

Q. And then there is a steel plate on each side, isn't that so? A. Yes, next to the tank.

Q. Next to what tank, the fresh-water or tank 5?

A. The fresh-water tank. [205]

Q. Here is the fresh-water tank, is that right?

A. Yes.

Q. Then comes steel bulkhead? A. No, wood.

Q. Then comes steel right next to it?

(Deposition of T. Ota.)

A. No, it is the fresh-water tank there, then the wood bulkhead.

Q. Then what, after wood bulkhead what?

A. Nothing.

Q. Then wood bulkhead between tank 5 and fresh-water tank, is that right? A. Yes.

Q. Is there wood bulkhead along on the other side of fresh-water tank? A. Yes.

Q. Then, is there any space between the fresh-water tank and this cargo tank?

A. Nothing at all except the wood bulkhead.

Q. What do you mean by a space?

A. There must be a space between the tank and the wood bulkhead.

Q. Between the tank and the wood bulkhead?

A. Yes.

Q. What is the tank lined with? A. Steel.

Q. Then, how much space is there between the steel and the wood bulkhead of this tank?

A. Why, I cannot tell any measurement, almost nothing.

Q. Inch or two inches or a foot or what?

A. About one or two inches.

Mr. McKEON.—Q. One or two inches between the steel tank and the wooden bulkhead?

A. Yes.

Q. And how wide is the wooden bulkhead?

A. Thickness—about two inches.

Q. And then is there a space between the wooden bulkhead and the steel fresh-water tank?

A. Not very much.

(Deposition of T. Ota.)

Q. There is a slight space? [206]

A. About a couple of sheets of paper, you can put in.

Q. A very slight space?

A. A very slight space.

Q. And that is true of both starboard and port side?

A. Yes, but I am not talking about the fore and aft end, but I am talking about the two sides.

Q. Then, if there were scuppers out of No. 5 tank, would they take care of any overflow of oil and carry it out through this space that you speak of between the fresh-water tank and No. 5 tank, or would they—strike that out. Put it this way, so that he can put it in his own language: Describe just where the scuppers were located on No. 5 tank.

Mr. KNIGHT.—I am going to object to that. He said they went down on the port and starboard side.

Mr. McKEON.—Q. Point it out here.

Mr. KNIGHT.—I think he has already gone into that.

Mr. McKEON.—Will you point out there?

A. (Witness indicates.)

Q. That is where it left No. 5 tank? A. Yes.

Q. Mark it with an "S" on the cargo plan; marked with an "S" for scuppers.

A. Not on this side.

Q. On one side; and does that pass down through the engine room; where does it drain?

A. The fresh-water tank is down below; this is

(Deposition of T. Ota.)

not the end of the fresh-water tank. The fresh-water tank goes down below, further than the floor of this No. 5 tank. Through the scuppers it leads into the bilges.

Q. Where are the bilges located with respect to the No. 5 tank?

A. Immediately opening into the bilges.

Q. But where is it located with respect to that?

A. In the shaft alley.

Mr. KNIGHT.—Q. Are there two scuppers there in that cargo tank? [207]

A. Yes, on both sides.

Mr. KNIGHT.—Then he wants to mark them on both sides. Anything further you want to ask?

Mr. McKEON.—I think not.

Mr. KNIGHT.—I have two or three questions to finish.

#### Redirect Examination.

Mr. KNIGHT.—Q. Captain, this little place here on the upper deck of the "Korea" which you said you could not place; isn't that the skylight of the engine-room?

A. Yes, I should think it is; I am very certain about it.

Q. Now, in the engine-room will you state whether or not the boilers are on the forward or aft end?

A. The boilers are situated somewhere around there. (Indicating.)

Q. Forward? A. Yes.

Q. State whether or not there has been any

(Deposition of T. Ota.)

change in the ventilating apparatus of that steamer from the time she made her voyage No. 4 to the present time? A. No.

Q. Now, by the term "engineers' quarters," when you were pointed to the position on the ship which is known as the thrust recess, what do you mean?

A. I mean the place where the engineers come in to get cool.

Q. And the engineers go to the thrust recess here to get cool, do they?

A. You must understand there is also a shaft present in that place.

Q. The shaft that goes through from the engine-room down to the propellers?

A. Yes. It is nothing but a space, vacant space.

Q. A great big space stretching from one side of the vessel to the other? A. Yes, sir. [208]

Q. And that is before the vessel is divided into two shaft alleys? A. Yes, that is the very place.

Q. Now, then, do the bilges collect all of the water and the liquid that comes from the washing of the decks and otherwise throughout the vessel?

A. With the exception of the very top deck all the waters and fluids and practically everything come down to the bilges.

Q. And are pumped from the bilges by the bilge pumps forward? A. Yes.

Q. Do you know, Captain—I am referring now to the door of each of the ventilators in this 5 hold, 5 tank—how high is the bottom of the door from the bottom of the floor?

(Deposition of T. Ota.)

A. About ten inches from the floor.

Mr. KNIGHT.—I think that is all.

Recross-examination.

Mr. McKEON.—Q. Captain, how often did you take the temperature of the fresh-water tank on this voyage?

A. I never took the temperature of the fresh water, but I always know about how much the temperature of the water is.

Q. But you never took it?

A. No. I want to add that it is a rule that the water in the fresh-water tank is always the same as the temperature of the sea water.

Q. You spoke on direct examination of the ice and the cold-storage plant being close to No. 5 hatch. You mean that it was on top of the main deck? A. It is about right here (indicating).

Q. I know it is right there, but I am trying to define the deck?

A. We call it the upper deck—no, main deck.  
[209]

### **Deposition of Y. Iijima, for Claimant.**

Direct Examination.

Mr. KNIGHT.—I gave a notice of the taking of the deposition of the first engineer, but it seems they have sent up the chief engineer instead; so, will you consent to taking the deposition of the chief instead?

Mr. McKEON.—Yes. The log-book is to remain in Mr. Knight's possession?



(Deposition of Y. Iijima.)

Mr. KNIGHT.—We will arrange for the log-book.

Will it be stipulated that it will be unnecessary to have each of these witnesses sign the depositions?

Mr. McKEON.—Yes.

Mr. KNIGHT.—And that the testimony of Mr. Y. Iijima may be taken under the notice *de bene esse* in the place of T. Miyamai, with the same force and effect as if he were specially designated in the notice.

Mr. McKEON.—Yes.

Mr. KNIGHT.—Q. Mr. Iijima, you are the chief engineer of the “Korea Maru,” are you not?

A. Yes, sir.

Q. How long have you been the chief engineer?

A. Just about eleven years.

Q. Were you chief engineer when the “Korea Maru” was in the service of the Pacific Mail Steamship Company? A. No, sir.

Q. Then how is it that you could have been chief engineer for eleven years? A. One year.

Q. One year?

A. Yes, sir. I joined the “Korea Maru” last August. [210]

Q. You joined the “Korea Maru” August of last year, so that I must have misunderstood your testimony. Will you state when the vessel is at sea ordinarily with her engines working about what is the temperature of the engine-room?

(Deposition of Y. Iijima.)

A. In the summer-time it was ninety to one hundred.

Q. And what is the temperature in the shaft alley? A. It is lower than that.

Q. What ordinarily would you say—how much cooler would the shaft alley be than the engine-room? A. Well, about five or six degrees.

Q. What would the shaft alley be ordinarily in the summer-time when the engines were working?

A. 85 to 95.

Q. Do you know what ventilators lead to the shaft alley? A. What?

Q. What ventilators lead to the shaft alley; do you know about the ventilation of the ship; are there ventilators leading down to the shaft alley from the upper deck right aft of the engine-room?

A. Aft and forward.

Q. I am not speaking of forward—right aft of the engine-room, will you state whether or not those go through No. 5 hold? A. Yes, sir.

Q. How does the air enter those ventilators, from above or below? A. Oh, from above.

Q. From above? A. Yes.

Q. Does it pass down through to the shaft alley?

A. Yes, sir.

Q. And passes through No. 5 hold?

A. Yes, No. 5 hold, too.

Q. No. 5 hold and the shaft alley.

Q. It goes through No. 5 to the shaft alley?

A. Yes, sir.

Q. State whether there are any ventilators in the

(Deposition of Y. Iijima.)

aft part of the [211] ship that lead to the shaft alley? A. Yes.

Q. Where are those ventilators, Chief?

A. Just above the thrust bearing.

Q. Where it is marked "thrust recess"?

A. Yes, sir.

Q. You have said there were two ventilators leading down through hold 5 to the thrust recess?

A. Yes, sir, through the ice chambers.

Q. They go through the ice chambers?

A. Yes, sir.

Q. Now, do you know whether or not any cold air comes down through the ice chamber down through that ventilator? A. Yes.

Q. Does cold air come down through the ventilator down through the ice chamber?

A. Yes, cold air.

Q. It comes down through the hold here and down through the thrust recess? A. Yes.

Q. Did you say two ventilators?

A. Yes, sir, a ventilator on each side.

Q. One port side and one starboard side?

A. Yes.

Q. Are there any other ventilators that lead down from the deck to the shaft alley? A. Yes.

Q. Whereabouts? A. About here.

Q. The witness points to the No. 7 hold.

A. No. 7 hold.

Q. And it comes down from the upper deck?

A. Yes, upper deck.

Q. Down to the shaft alley? A. Yes.

(Deposition of Y. Iijima.)

Q. How many ventilators, Chief?

A. One on each side.

Q. One on each side?

A. Yes, they are big ones.

Q. Big enough for man to go through?

A. Yes.

Q. Down the ladder?      A. Yes.

Q. Do firemen come down from the deck by that ladder? [212]      A. Yes.

Q. Why do they come down that way?

A. In stormy weather.

Q. In stormy weather?

A. In stormy weather they cannot pass the ship's side, one side.

Q. The one side the cabin goes out to the skin of the ship?      A. Yes.

Q. They cannot go by there?      A. Yes.

Q. So that the firemen come down through this ventilator?      A. Yes.

Q. And there is one on port and one on star-board side?      A. Yes.

Q. How does the air get into the shaft alley?

A. The shaft alley here?

Q. How does the air get in; does the air come down the shaft alley and go in or does the air come down from the top and go in?

A. From the top it goes in.

Q. Where does the air go to when the air comes down to the shaft alley?

A. It goes to the engine-room.

Q. Cold air come in here?

(Deposition of Y. Iijima.)

A. Yes, and when the wind blows it goes down through the ventilator and into the shaft.

Q. Why, if that air comes in from the outside to the shaft alley, why is the shaft alley only five degrees less or so in temperature than the engine-room?

A. You must understand that the temperature in the engine-room is all different, from bottom, middle and top; everybody knows that, and in the bottom of the place where the cold air comes through the shaft alley is always cool and much cooler than any other portion in the engine-room.

Q. When you told me the temperature in the engine-room was from 90 to 100 degrees what part of the engine-room were you referring [213] to?

A. About here—90 degrees.

Q. Well, 90 degrees, that is in the forward part of the engine-room? A. Yes.

Q. What is the temperature in the aft part of the engine-room?

A. Not much difference. From 'tween-decks it is a little bit hotter.

Q. I will go back to my question that I asked: If so much cold air goes down to the shaft alley why is not the shaft alley much cooler than the engine-room?

A. This is the place where all fresh and cool air comes in—the shaft alley—and no steam is present, and therefore it is cool.

Q. Does any steam get into the shaft alley?

A. No.

(Deposition of Y. Iijima.)

Q. Well, I will again ask the question: Why if there is no steam that goes into the shaft alley, and if there is this fresh air that goes into it, why isn't it very much cooler than the engine-room?

A. You understand that it must be according to the temperature and the atmosphere is always kept in here.

Q. Kept in the engine-room?

A. Yes, and the atmosphere is about 85 and 90 degrees, and therefore the engine-room in the bottom is very much different with the shaft alley.

Q. In other words, the temperature of the engine-room is virtually the temperature of the outside?

A. Yes.

Q. And the air coming in from the outside into the shaft alley makes the temperature of the shaft alley—

A. No, the shaft alley is much cooler, but around here in the bottom much cooler.

Q. You say "much cooler"; what do you mean by much cooler?

A. I should think there is not very much difference, excepting five or six degrees in the bottom of this engine-room and the shaft alley.

Q. Where is the ice-making plant?

A. Right here (indicating). [214]

Q. The ice-making plant is over—here is tank 5, here is the engine-room, here are the fresh-water tanks; the ice-making plant is just over the hold 5 which we call tank 5?

A. The machine is in the engine-room.

(Deposition of Y. Iijima.)

Q. No, it is not there. It is away over here. As a matter of fact, do you know this is the engine-room? A. Yes.

Q. Where in the engine-room is this?

A. That is the place where the ice-making engine is (indicating).

Q. Up in that corner?

A. I will explain by other—this drawing is not very good; it is confusing.

Q. Think the thing over, and where to the best of your recollection and knowledge is that ice-making machine? If you do not know, say you do not know. A. Outside of the cold storage.

Q. Where outside of the cold storage? Well, no matter; if you do not know. Now, let me ask you one further question: How is that engine-room ventilated?

A. There is a ventilator just in here.

Q. A big skylight? A. Yes, and also a tube.

Q. The tube that leads down?

A. Yes, made with steel, with pipe.

Q. Well, I do not know that I want to ask any further questions.

#### Cross-examination.

Mr. McKEON.—Q. Chief, you say the bottom of the engine-room is cooler than the top of the engine-room? A. Yes, sir.

Q. Take the position opposite the place designated on this blue-print as "Tank No. 5"; that is hotter than it is down at the bottom of the engine-room, isn't it—up here? A. Yes, hotter.

(Deposition of Y. Iijima.)

Q. Hotter? A. Yes, hotter right here. [215]

Q. And on top—do you know anything about what is on top of No. 5 tank? A. It is a hold.

Q. A cargo hold? A. Yes.

Q. And then on top of that is your cold storage?

A. Yes, cold storage.

Q. And that is about eight or ten feet on top of No. 5 hold? A. No, No. 5 tank.

Q. No. 5 tank here?

A. No; No. 5 tank is here; No. 5 hold, you mean?

Q. No. 5 hold—eight or ten feet on top of that.

A. That is on top of No. 5 hold.

Q. Is it directly on top of No. 5 hold, or is it eight or ten feet on top of No. 5 hold? This is No. 5 right here. This is a cargo compartment. What is the difference between the top of this No. 5 and the bottom of this cold storage?

A. About eight feet—the room between decks. This side eight feet high—seven feet, and to the top it is eight feet.

Q. It is hotter around the engine-room than it is any other place around the ship, isn't it?

A. No, not so.

Q. It is not? A. No. This part is very cool.

Q. The bottom is cool?

A. Yes, the bottom is cool.

Q. Is it hotter on the after part of the engine-room than it is any other place on board ship?

Mr. KNIGHT.—Q. Where is the hottest part of the ship, in other words?

A. It is hot in here.



(Deposition of Y. Iijima.)

Mr. KNIGHT.—Under the smokestack that is aft.

Mr. McKEON.—Q. Is it hotter immediately abaft the engine-room than it is over here in No. 7 hold?

Mr. KNIGHT.—What are you referring to—are you referring to [216] the engine-room itself?

Mr. McKEON.—I am saying immediately abaft the engine-room.

A. Not much difference.

Q. Not much difference?

A. No, by reason of the insulation.

Q. Now, is it hotter right at the place that I am holding my finger at, the engine-room right in front of No. 5 tank, than it is in No. 7?

A. In the engine-room the most hot place.

Mr. McKEON.—I move to strike that out as not responsive to the question.

Q. I am asking you the difference between this place and this place here.

A. No, not much difference.

Q. And is there any difference between No. 7 and the shaft alley?

A. Yes, I think there is a little difference.

Q. There is? A. Yes.

Q. What is the difference?

A. Shaft alley is cooler.

Q. And the shaft alley is cooler than the engine-room? A. Yes.

Q. Upon direct examination you testified that the average temperature in the engine-rooms was 95 to 100? A. Yes.

Q. You do not mean by that that the average tem-

(Deposition of Y. Iijima.)

perature in the engine-room on the "Korea Maru" at all times is 95 or 100?

A. In the summer-time.

Q. In the summer-time? A. Yes.

Q. On a voyage over from Manila to San Francisco, Chief, in the summer-time, do you or do you not expect to have your engine-room hot?

A. Yes; it is hotter than any other season.

#### Redirect Examination.

Mr. KNIGHT.—Q. There are only two questions I want to ask: [217] Where are your boilers, Chief? A. Forward of the engine-room.

Q. And was your cold-storage plant in operation and did it contain ice on your voyage 4?

Mr. McKEON.—He was not on voyage 4; he said he joined in August, 1917.

Mr. KNIGHT.—Q. Was it 1917?

A. No, 1916.

Q. Then you mean to say that you have been chief engineer of the vessel since August, 1916; you were chief engineer then on voyage 4? A. Yes.

Q. And was your cold storage plant in operation and containing ice on that voyage? A. Yes.

Mr. KNIGHT.—That is all. [218]

#### Deposition of Y. Yamamura, for Claimant.

##### Direct Examination.

Mr. KNIGHT.—Q. You are about to go to sea, are you not, on Wednesday, on the "Korea"?

A. Yes, sir.

Q. And you go with the chief engineer?

(Deposition of Y. Yamamura.)

A. Yes.

Q. He goes too? A. Yes.

Q. Do you know these two tanks; do you know this cargo—what we have been referring to as cargo tank 5? A. Yes.

Q. And hold 7? A. Yes.

Q. They are the two holds where the cocoanut oil was stowed on voyage 4, homeward voyage 4; you know those two tanks?

A. Yes, I know them.

Q. Is there any difference in the temperature of hold 5 from the hold 7?

A. I do not know exactly. I have joined the ship only lately, but I hardly believe the temperature in those two tanks would be the same.

Q. What did you say; I did not quite get your answer; you say you hardly believe that they are the same?

A. Yes, I believe.

Q. You believe that they are the same or are not the same? A. Are the same.

Q. You believe that they are the same?

A. Yes.

Mr. McKEON.—Q. Did you ever compare them, the temperatures in the two of them? A. No.

Mr. McKEON.—That is all.

Mr. KNIGHT.—That is all. [219]

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I, John E. Manders, a notary public in and for

the City and County of San Francisco, State of California, do hereby certify that pursuant to the annexed notices, issued and served in the above-entitled cause, I was attended at the office of Samuel Knight, Esq., No. 1306 Hobart Building, No. 582 Market Street, in the City and County of San Francisco, State of California, by Samuel Knight, Esq., proctor for the claimant herein, and also by Joseph B. McKeon, Esq., representing Messrs. McCutchen, Olney & Willard, Proctors for the Libelants, on the day and date hereinbefore stated; that the aforementioned witnesses, T. Ota, Y. Iijima and Y. Yamamura, who were of sound mind and lawful age, were by me first carefully examined and cautioned and duly sworn to testify the whole truth and nothing but the truth, through said interpreter, P. M. Miyasaki, who had previously been duly sworn as interpreter in these proceedings; and said witnesses thereupon testified and proceedings were had as above shown; and the said depositions were, by Erwin M. Cooper, a stenographer and disinterested person, reduced to writing under my supervision, the reading over and signing of same by the said witnesses having been waived, as per stipulation hereinbefore in this record set forth, and were taken at the place in the annexed notices specified and at the time set forth.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that all of the deponents are about to go to sea more than 100 miles from the place where the said action

is appointed by law to be tried; that I am neither of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause; and that I have retained the said depositions in my possession for the purpose of delivering [220] the same with my own hand to the clerk of the Southern Division of the United States District Court in and for the Northern District of California, the Court for which the same were taken.

I further certify that the exhibits attached to said depositions, marked by me respectively, "Claimant's Exhibits Nos. 1 and 2," are the exhibits referred to and used in connection with said depositions.

IN WITNESS WHEREOF, I have hereunto subscribed my name and attached my official seal at my office in the City and County of San Francisco, State of California, this 28th day of January, 1918.

[Seal] JOHN E. MANDERS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires January 26th, 1919.

[Endorsed]: Filed Mar. 29, 1919. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [221]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS & PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel,  
etc.,

Respondents.

TOYO KISEN KAISHA, a Corporation,  
Claimant.

APPEARANCES.

J. B. McKEON, Esq., for the Libelants.

F. B. BOLAND, Esq., for the Respondents.

**Testimony Taken Before Francis Krull, United  
States Commissioner, on Reference.**

Monday, March 28th, 1918. [222]

**Testimony of Chiyokichi Ito, for Respondent.**

CHIYOKICHI ITO, called for the respondent, through the interpreter, H. Ishikawa, having been duly sworn, testified as follows:

Mr. BOLAND.—Q. What do you do?

A. I am a carpenter.

Q. On the "Korea Maru"? A. Yes.

(Testimony of Chiyokichi Ito.)

Q. How long? A. For about three years.

Q. Do you do soundings? A. Yes.

Q. Do you do soundings in the engine-room bilge? A. Yes, I do.

Q. Ask him whether hold 5 drains into the engine-room bilge. A. Yes, I know.

Q. Ask him if it does.

A. Yes, I know it does.

Q. How often do you sound the engine-room bilge? A. Morning and night; every day.

Q. If you know, how often is the engine-room bilge pumped out?

A. About five or six times during the day.

Q. When he sounds the engine-room bilge, does he ever notice any oil on the sounding-rod?

A. Yes, I can tell.

Q. Ask him if he notices oil on the sounding-rod when he sounds the engine-room bilge.

Mr. McKEON.—Of course, the answer to that question depends upon whether there is any oil in the bilge.

A. Well, I can see what it is.

Mr. BOLAND.—Q. What I want him to answer is that question. You put it so he understands it, Mr. Interpreter. A. I can see; yes.

Q. He can see it? A. Yes.

Q. Does he always find oil on the sounding-rod in the engine-room bilge? A. Yes.

Q. Where does the oil come from?

A. That is from the engine-room.

Q. What kind of oil? [223]

(Testimony of Chiyokichi Ito.)

A. Whitish, and kind of foam on it.

Q. Is it cylinder oil?

A. Yes; cylinder oil and engine oil.

Mr. BOLAND.—That is all.

Cross-examination.

Mr. McKEON.—Q. Don't you, on your ship, save the drainage from your engine oil and use it for other purposes?

A. I never use it for any purpose at all.

Q. Do you save your cylinder oil at all after it is used on the engines? A. Never use it.

Q. Have you ever used it on any ship you have ever been on?

A. If we get any oil from the engine-room in the bilge we never use it.

Q. How many bilges on the "Korea Maru" are used for the drainage of the engine-room?

A. Just the two.

Q. What is the number of the bilges?

A. 9 and 10.

Q. Does No. 10 take care of the drainage from No. 5 tank abaft the engine-room?

A. Yes, No. 10 bilge is located on the No. 5 hatch.

Q. And takes care of the leakage from No. 5 tank—in No. 5 hatch?

A. The location of No. 5 tank is an entirely different locality.

Q. No. 5 tank is in No. 5 hatch, is it not?

A. No.

Q. It is not? A. No.

Q. Do you know what No. 5 tank is on the



(Testimony of Chiyokichi Ito.)

“Korea Maru”? A. I know.

Q. Where is it located?

A. It is right under our baggage-room.

Q. Isn't there a hatch in No. 5 hold where cargo is sometimes stowed immediately abaft the engine-room, known as No. 5 tank?

A. No. 5 tank is not located in No. 5 hatch. [224]

Q. Were you on the ship at the time the cocoanut oil was stowed in No. 5 tank and was badly damaged?

A. To my knowledge, I don't know whether they put oil in No. 5 tank.

Q. You know where No. 5 hatch is on the ship, don't you? A. Yes, I know.

Q. In No. 5 hatch, do you know where the water-tanks are? A. Yes.

Q. Do you know that between the water-tanks, and immediately abaft the engine-room, there is a square tank?

A. There is no tank, but I know there is one orlop hold.

Q. That is on top of a portion of the engine-room?

A. Yes.

Q. It is not on top of the engine-room?

A. That is on top of the orlop hatch—it is located on the shaft tunnel, not on the engine-room.

Q. What do you call the thrust recess?

The INTERPRETER.—I couldn't understand that myself.

Q. Never mind what you understand. You just

(Testimony of Chiyokichi Ito.)

repeat the question: What do you call a thrust recess?

The INTERPRETER.—I cannot understand—I don't know what that is.

Q. You ask the question of him and he will know.

The INTERPRETER.—I cannot translate it in the first place, the thrust recess.

Q. Can't you put thrust recess in Japanese?

The INTERPRETER.—I don't know.

Mr. McKEON.—So that there will be no misunderstanding as to what we are talking about now, the thrust recess is immediately under the No. 5 tank and is a part of the engine-room, and this orlop tank described by the witness is on top of the thrust recess. [225]

Q. What bilge drains that orlop compartment that you have just talked about?

A. That No. 10 bilge.

Q. How deep are your engine-room bilges?

A. About four feet.

Q. About four feet?      A. Yes.

Mr. McKEON.—I think that is all.

Mr. BOLAND.—If there is engine oil in the bilge and cocoanut oil in the bilge, can you tell the difference on the sounding-rod?

A. I can't distinguish. [226]

Thursday, April 3, 1919.

### **Testimony of Benjamin Free, for Respondent.**

BENJAMIN FREE, called for the respondent, sworn.

Mr. BOLAND.—Q. Mr. Free, what is your busi-

(Testimony of Benjamin Free.)

ness? A. Consulting engineer.

Q. What kind of engineer? A. Marine.

Q. Do you know the "Korea Maru"? A. Yes.

Q. Did you ever have any experience with that vessel?

A. Being assistant superintending engineer on the Pacific Mail dock she came under my jurisdiction.

Q. When was that? A. In 1917.

Q. Did you ever sail on her too?

A. As a junior engineer, but I would leave that out.

Q. You have sailed on her? A. Yes.

Mr. McKEON.—Q. When did you sail on her?

A. On 1916.

Mr. BOLAND.—Q. You visited the vessel lately, too, did you not? A. Yes.

Q. When? A. Saturday, March 29th.

Q. Will you describe from your recollection the relation of hold or tank 5 so-called to the engine-room and the outside of the ship?

A. No. 5 tank consists of mostly the recess of the shaft alley, with each side of this recess taken up by fresh-water tanks.

Q. It extends to the skin of the ship, does it?

A. No.

Q. Where is it cut off?

A. It is right in the center of the vessel leaving these two fresh-water tanks to come on each side of it.

Q. What is between tank 5 and the skin of the ship? A. Fresh-water tank. [227]

(Testimony of Benjamin Free.)

Q. Are there any bulkheads? A. No.

Q. I mean steel bulkheads?

A. No; there is a temporary wooden bulkhead.

Q. Then with the exception of these fresh-water tanks, 5 tank does extend to the skin of the ship?

A. Yes.

Q. What are those fresh-water tanks used for?

A. Drinking purposes.

Q. Is condensed water ever put in there?

A. No.

Q. Where does the water come from and where does it go to?

A. It comes from the city tanks, from the port of call, and is pumped up to a service tank on top of the house; this service tank supplies the fresh water to the baths and galley.

Q. That is for the purpose of pressure?

A. Pressure, a gravity system.

Q. Where is the condensed water put?

A. Into the condenser and into the hot well.

Q. Why is the condensed water not put into this tank?

A. Because it is poisonous, from using foreign matters in the boilers.

Q. Boiler compound, etc.?

A. Boiler compound, etc.

Q. What is the location of this tank 5 with reference to the engine-room?

A. It is abaft the engine-room.

Q. Separated by steel bulkheads?

A. By steel water-tight bulkheads.

(Testimony of Benjamin Free.)

Q. What is it just above, just immediately above?

A. Immediately above the shaft alley recess.

Q. Often called the thrust recess.

Q. How far down do these fresh-water tanks go?

A. To the top of the tank tops.

Q. How far down in that vessel do they go?

A. To the [228] bottom, within four feet of the skin.

Q. They go down, then, alongside of the thrust recess, do they? A. Yes.

Q. Where are the scuppers in No. 5 tank?

A. Aft of the after end of No. 5 tank, underneath the fresh-water tanks.

Q. Where does the waste go from No. 5 tank? Describe where it goes and how it goes into the bilges, and what bilge it goes into.

A. It drains from the scuppers from the 'tween-decks and all up deck down on to the tank tops and underneath the fresh-water tanks to a scupper leading into No. 10 bilge.

Q. Where is No. 10 bilge?

A. Aft of the engine-room.

Q. Does the waste drainage go to the skin of the ship at all? A. No.

Q. It goes right down alongside—

A. (Intg.) The recess.

Q. The recess? A. Yes.

Q. Does it go through a pipe at any point?

A. No; only on the skin of the ship; there is a girder running along the ship's side for stiffening, where the sweat from the difference between the

(Testimony of Benjamin Free.)

temperature between the inner and outer holds drains along a gutter-way there and down through a scupper pipe into the top of the tank top and that flows over into the scupper in No. 10 bilge.

Q. But all the drainage does not necessarily go through that place you speak of? A. No.

Mr. McKEON.—Q. You refer to tank tops; you mean the double bottoms? A. Yes.

Mr. BOLAND.—Q. Is there any place between these scuppers and the bilge where the drainage from No. 5 tank could be plugged up?

A. No, sir. [229]

Q. Is there any manhole from the thrust recess or engine-room into No. 10 bilge? A. Yes.

Q. Where is it?

A. It is over the top of bilge 10, about the thrust bearing.

Q. Is that ever taken off during a voyage?

A. Very seldom.

Q. Why?

A. It is only taken off in case the bilges or the suction pipe blocks up.

Q. It is taken off in port, is it? A. Yes.

Q. Why is it taken off in port?

A. To clean the bilges.

Q. Otherwise it is not? A. No.

Q. Is it possible to go through the manhole into the bilge? A. Yes.

Q. How could you do it?

A. Well, by removing this plate you could step into the bilge, if there is no water in there.

(Testimony of Benjamin Free.)

Q. If you go through the manhole don't you go into where the fresh-water tanks are?

A. No, not over the bilge; there is a manhole on the bulkhead leading into No. 5 hold; that is the one you are referring to. There are two manholes; there is one over the bilge itself so that you can get down to the strainer, and the other leads into No. 5 hold.

Q. Does the engine-room drain into the same bilge as No. 5 hold? A. Yes.

Q. No. 5 tank? A. Yes, into bilge 10.

Q. Where does the No. 7 hold drain?

A. Aft of the shaft alley into bilge 10.

Q. Does any oil from the engine-room or the shaft alley drain into these two bilges, 10 and 11?

A. Yes.

Q. Where does it come from?

A. Splashing from the main engine, from the thrust bearing and spring bearing of the shaft alley; there is a wick feed that keeps constantly feeding all [230] the time.

Q. Are those two bilges pumped during the voyage, and if so how constantly are they pumped?

A. They are pumped every four hours.

Mr. McKEON.—On what voyage?

Mr. BOLAND.—On any voyage.

A. On any voyage—

Mr. McKEON.—Q. You were not on the voyage on which the "Korea Maru" came in with this cocoanut oil? A. No.

Mr. McKEON—I object to that question as im-

(Testimony of Benjamin Free.)

material, irrelevant and incompetent.

Mr. BOLAND.—Q. Could they stop pumping the bilges of that vessel at any time?

A. No, because the waste water from the main engine leads into No. 10 bilge.

Q. What would be the result if they stopped?

A. Overflow.

Q. That is the same of 10 and 11, is it?

A. Yes, leakage from No. 11 from the stern gland would overflow No. 11 bilge.

Q. Did you ever see the sounding of these bilges?

A. Yes.

Mr. McKEON.—At what time?

Mr. BOLAND.—At any time.

A. At any times, at all times.

Q. You have seen the soundings? A. Yes.

Q. Did you ever see oil on the sounding-rods?

A. Always.

Q. Is that so on every vessel?

A. On every vessel.

Q. That is the engine-room bilges? A. Yes.

Q. Why is that?

A. Because the leakage from the main engine or spring bearing to the shaft alley drains over the tank tops into these bilges.

Q. Assume that there is also in the bilges coconut oil so [231] that there is this other oil that you have just mentioned, could you tell the difference on the sounding-rod between the one and the other? A. No.

Q. What temperature does the engine-room of the



(Testimony of Benjamin Free.)

“Korea Maru” reach on a voyage, assuming a voyage from Manila? A. About 115.

Q. Is that the maximum.

A. About the maximum.

Q. Could you tell what the relative temperature between the engine-room and No. 5 tank would be on a similar voyage?

A. About 15 degrees—15 or 20.

Q. It would be cooler? A. Cooler.

Q. No. 5 tank would be 15 or 20 degrees cooler?

A. Yes.

Q. Can you tell why that would be?

A. There are no steam-pipes, no heat going through there, like the steam lines and auxiliary steam lines in the main engines, etc., in the main engine-room.

Q. What, if anything, would tend to cool No. 5 tank, too?

A. The ship's water—the drinking water-tank would have a tendency to cool it, and the outside splash of the ocean water, the sea water.

Q. Would the fact that there is heat adjoining the No. 5 tank and that there is cool water in the wings and also the sea water at the side tend to make any moisture in that hold?

A. It would create the action of sweating.

Q. Sweating in that hold? A. Yes.

Q. It would congeal the moisture?

A. Congeal the moisture.

Q. And make it settle? A. Yes.

Q. Are there any empty tanks under the engine-room? A. No.

(Testimony of Benjamin Free.)

Q. What are those tanks used for?

A. For boiler feed.

Mr. BOLAND.—That is all. [232]

Cross-examination.

Mr. McKEON.—Q. No. 5 tank you say is in the center of the ship? A. Yes.

Q. And it has dividing the fresh-water tanks wooden bulkheads?

A. No; the recess from the shaft alley divides the water-tanks.

Q. I am not talking about that. No. 5 tank has a floor in it, a steel floor, hasn't it? A. Yes.

Q. That steel floor is above the thrust recess, is it not? A. Yes.

Q. Then there is a steel bulkhead separating it from the engine-room? A. Yes.

Q. Then on the other end of it, further aft, is another steel bulkhead separating it from the next cargo compartment? A. Yes.

Q. On both the port and starboard sides there is a wooden bulkhead separating that compartment from the steel tanks? A. Yes.

Q. So that No. 5 tank, confining it to that square, which we have described, is completely enclosed?

A. Enclosed, yes.

Q. How far away from the bulkhead, the wooden bulkhead and No. 5 tank on either side of the ship, is the skin of the ship?

A. I should judge about 25 feet.

Q. On each side? A. Yes.

Q. And in your judgment the sea water touching

(Testimony of Benjamin Free.)

the skin of the ship 25 feet away from that wooden bulkhead is going to have an effect on the heat of No. 5 tank?

A. With the radiation from the fresh-water tanks that are close up to this wooden bulkhead.

Q. Answer the question whether it will or not in your opinion? A. Yes, it will. [233]

Q. A pipe drains from No. 5 tank into the bilge, does it not? A. No pipes.

Q. It passes from the scuppers into a pipe and down the skin of the ship into the bilge, doesn't it?

A. That is only on the girder, what they call a girder for stiffening which runs along the skin of the ship.

Q. We have the bottom of No. 5 tank, haven't we? A. Yes.

Q. A steel tank? A. Yes.

Q. The seepage from that tank passes where?

Q. Underneath the fresh-water tanks?

A. Underneath the fresh-water tanks.

A. Yes.

Q. From there, where does it go?

A. To a scupper into No. 10 bilge.

Q. Does it in that course pass through any pipe whatsoever? A. No, sir.

Q. What pipe enters into the bilge—where does it enter into the rose-box?

A. Right under the tank.

Q. Is there a pipe in the rose-box?

A. No; there is a rose-box over the top of this hold; it drains right into the bilge.

(Testimony of Benjamin Free.)

Q. Does that drainage go in there in a large opening, or through some pipe?

A. No pipe at all.

Q. How does it get in there, just flow in through a nozzle?

A. Through the tank tops—over the tank tops, and there is a hole in the tank top, and over the top of the hold is the rose-box to protect it, to let in no sticks or foreign matter, to go down with the seepage—so it won't stop the rose-box up—that is really down in the suction pipe.

Q. How many voyages have you ever made on the "Korea Maru" as junior engineer?

A. One; that is mostly around the bay, the city here. [234]

Q. Around the bay?     A. Yes.

Q. Where was that voyage?

A. Around the city here, around from the Quarantine Station to Hunters Point drydock, and then I had charge of the ship from the dock to the drydock.

Q. On that trip from Hunters Point drydock, did you personally take soundings?

A. No, but I was there when they took soundings; the assistant to the junior on watch always takes them.

Q. Where were you going from Hunters Point?

A. Taking her to the quarantine ground.

Q. What period of the day was that?

A. Three o'clock in the afternoon.

Q. To when?     A. Till 4:30.

Q. An hour and a half?     A. Yes.

(Testimony of Benjamin Free.)

Q. Was the ship loaded? A. Yes.

Q. How did you happen to go out there to join her? She was coming in, I suppose, at that time?

A. Yes.

Q. How did you happen to go out to join her?

A. The assistant superintending engineer always has to go out and join the ship—on every voyage he had to go over all the requisitions for repairs, and go over all the repairs.

Q. So that that hour and a half that you spent going from the Quarantine Station to Hunters Point is the extent of your experience with the "Korea Maru" under way?

A. No, that is only one day; I have joined her every voyage as she came in and done the same thing.

Q. In that way, that has been your experience?

A. Yes.

Q. You did that several times?

A. I did it for a year and seven months.

Q. What is the customary time of taking soundings aboard ship? [235]

A. With the engineers, at the end of every watch.

Q. What are the watches?

A. Every four hours they change watch and the carpenter on deck sounds at six in the morning and six at night; he sounds the holds and the engineer sounds in the fire-room and the engine-room.

Q. Now, what is the leakage that ordinarily gets into the bilges from the engine-room?

(Testimony of Benjamin Free.)

A. Whatever waste water you have from the main engine, the cooling water.

Q. What oil leakage?

A. Whatever splash there is from the main engine and thrust bearing.

Q. That is minor, is it not?

A. It is enough to accumulate in there.

Q. Enough to accumulate? A. Yes.

Q. There is not any quantity of oil, is there? There is not two feet of oil from that, is there?

A. Oh, no. It would accumulate in a day. They use two gallons a watch, or two and a half gallons on each engine; that works off the engine and drains down into the bilge, and that is mixed with the circulating water that goes through the guides of the main engine and drains back into the 10 bilge.

Q. The greatest quantity of the seepage from the engine-room goes into 9 bilge? A. No. 9 and 10.

Q. 9 and 10? A. Yes.

Q. Which takes the most?

A. According to the trim of the ship.

Q. If she is down by the head, it is going into 9?

A. 9, more. It has to flow over the top of the tank tops either way to get into either bilge.

#### Redirect Examination.

Mr. BOLAND.—Q. What does the deck officer have to do with the engine-room?

A. Nothing, whatsoever. [236]

Q. How often, ordinarily, does he go down into the engine-room?

(Testimony of Benjamin Free.)

A. I never saw him down there in any ship I have ever sailed on.

Recross-examination.

Mr. McKEON.—Q. You don't know whether it is the duty of the first officer to make an inspection of every one of the bilges on any ship, after the completion of every voyage?

A. He has nothing whatsoever to do with the engine-room, as to any Pacific Mail vessel I have been on.

Q. Do you know whether it is the duty of the chief officer of the ship to make an examination of the bilges on every ship he sails on?

A. Never, outside of his own department—never in the engine-room or fire-room. There is no sounding-pipe from the engine-room or fire-room leading up onto the main deck, where the ship's carpenter, or mate, or anybody else could sound; always taken care of by the engineers down below in every vessel, every American vessel.

Mr. McKEON.—That is all.

**Testimony of W. J. Murray, for Respondent  
(Recalled).**

W. J. MURRAY, recalled for the respondent.

Mr. BOLAND.—You heard the testimony of Mr. Free, did you, Mr. Murray? A. Yes.

Q. And from it you gathered the relation of hold or tank 5 to the engine-room and the skin of the ship, etc.? A. Yes.

Q. You also heard Mr. McKeon's cross-examina-

(Testimony of W. J. Murray.)

tion with reference to hold 6 being abaft tank 5?

A. Yes.

Q. Hold 7 is immediately abaft that, again, on the "Korea Maru"? A. Yes.

Q. That is already in evidence. A. Yes. [237]

Q. From what you know of the case, and your testimony the other day, and what you have heard to-day, will you please tell us whether, in your judgment, tank 5 was a proper place to stow coconut oil? A. Yes, I do consider it proper.

Q. Will you explain why?

A. Well, it is abaft the engine-room; you have got the radiation of the sea water on the shell plating, and having the effect of the fresh-water tanks as to the temperature of that space between the wooden bulkhead of No. 5 and the shell plating.

Q. What effect of the condenser that was spoken of by Mr. Free, if any, would there be?

A. I should say there would be a beneficial effect on barrels.

Q. In what respect?

A. To prevent their drying out.

Q. Your answers assume that the containers were sufficient—that the containers in which the oil was placed in the hold were sufficient?

A. Sufficient.

Q. That is a proper place to stow if the containers are sufficient? A. Yes.

Q. Assume, Mr. Murray, that the cargo of coconut oil stowed in barrels in both hold 5 and hold 7, some of them came out empty, some partially empty,



(Testimony of W. J. Murray.)

and some full, what explanation would you give for that?

Mr. McKEON.—I object to that on the ground the witness is not qualified to pass upon it.

Mr. BOLAND.—He qualified the other day.

Mr. McKEON.—I don't think he did, and I interpose my objection to it.

Mr. BOLAND.—Will you explain that, Mr. Murray?

A. That the barrels that retained their contents possessed sufficient strength for the purpose for which they were intended, and those that did not retain their contents lacked the strength. [238]

Q. It may be that some of them dried out more than others?

Mr. McKEON.—I object to that on the ground it is leading and suggestive.

Mr. BOLAND.—I withdraw the question.

Q. Will you go on and explain how that might be, Mr. Murray?

A. That it is a fact is based on the experience that I have had that—

Mr. McKEON.—I object to the answer being based on the experience he has had on the ground it is not the opinion of an expert.

Mr. BOLAND.—Proceed.

A. That the barrels were found there, some partially full, others empty, and others apparently entirely full, in my opinion is evidence that some of the barrels contained the requisite strength in all parts, some of them only in parts, and some of

(Testimony of W. J. Murray.)

them lacked the strength where they needed it most.

Mr. BOLAND.—That is all.

Cross-examination.

Mr. McKEON.—Your answer as to tank 5 being a proper place for stowage of cocoanut oil in barrels, loaded to capacity, includes the fact that it was absolutely air-tight and no ventilation in there, does it? A. That the hold is closed?

Q. Absolutely air-tight and no ventilation in there.

A. No ventilation in there?

Q. You said that any compartment that is air-tight and gets no ventilation is a good place for the stowage of cocoanut oil?

A. According to its construction, as I have heard it defined here, there was a space between the shell plating and the bulkhead, and there was a space there for radiation of the lower temperature created by the action of the sea water on the shell [239] plating.

Q. You understand that this tank 5 is a square tank, the bottom of it is steel, the bulkheads fore-and-aft are steel, the side bulkheads are of timbers, made tight, and it being practically a square compartment, and being located approximately 25 or 35 feet on each side away from the skin of the ship, and being covered over on top completely so that there is no air whatever getting into the compartment, and one of the bulkheads separating it from the engine-room?

A. Do I understand you that that wooden bulk-head is an air-tight construction?

(Testimony of W. J. Murray.)

Q. Yes.

A. Then, if that is a fact, I should say that the radiation of the sea water would have very little effect there.

Q. Would you then say that is a proper place for the stowage of cocoanut oil?

A. If that wooden bulkhead is practically air-tight, then the effect of that radiation that I spoke of, assumed that this bulkhead was what we term a wooden bulkhead, a temporary affair, where there is a chance for the circulation of air; if it is absolutely an air-tight bulkhead, I could not consider that—

Q. (Intg.) That a proper place for the stowage of cocoanut oil?

A. I could not consider that a proper place for stowage of it.

#### Redirect Examination.

Mr. BOLAND.—Going back to the last question I asked you, if some of the barrels came out full of oil, some partially empty, and some entirely empty, from both holds 5 and 7, and it being admitted that hold 7 was a proper place for the stowage of cocoanut oil, wouldn't that indicate to you that hold 5 was a proper place to stow the cocoanut oil in?

A. A proper place to stow the cocoanut oil in, in view of the fact that some of the barrels came out partly full, some empty, and some full, but [240] if it is an actual air-tight compartment there, without being so constructed as to be affected by the radiation of the sea water on the shell plating—that

(Testimony of Lebeus Curtis.)

is created in that space between the shell plating and that bulkhead—I would not consider it an advisable place.

Mr. BOLAND.—That is all.

Mr. McKEON.—That is all.

**Testimony of Lebeus Curtis, for Respondent  
(Recalled).**

LEBEUS CURTIS, recalled for the respondent.

Mr. BOLAND.—Q. Referring back to your testimony the other day, Captain Curtis, do you think that hold 5 on the “Korea Maru” was a proper place to stow cocoanut oil?

A. Yes, if the containers are good enough.

Q. If a cargo of cocoanut oil comes out of holds 5 and 7, some with the barrels full, some empty, and some partially full, what does that indicate, in your mind?

A. That some of the containers were not good enough.

Mr. BOLAND.—That is all.

Cross-examination.

Mr. McKEON.—Q. In answering that question, do you understand that No. 5 tank was absolutely air-tight, without ventilation?

A. I am familiar with No. 5 tank and its location in the ship, and its characteristics, and I testified the other day it did not have any ventilation.

Q. You then say that despite the fact that there was no ventilation in No. 5 tank, and that it was

(Testimony of Lebeus Curtis.)

air-tight, it is a good place for the stowage of cocoanut oil?

A. If the containers are good enough to carry it, it will carry it in No. 5 tank, in No. 7 tank, in No. 1 hold—if it is a good container it [241] will carry the oil; if it is not a good container it will leak wherever you put it; I do not think the fact that it was in No. 5 tank had anything to do with the leakage. As I understand it from Mr. Boland's question, the amount of leakage was the same in the two compartments, where they had different conditions.

Q. Then you do not think No. 5 tank is a good place for the stowage of cocoanut oil, but you assume that the containers in that compartment were not good?

A. No. I think No. 5 tank is all right to stow cocoanut oil in provided the containers are good.

Q. Despite the fact that it has not any ventilation or air?

A. It does not make any difference if the container is good.

Q. What do you mean by "good"?

A. Good enough to hold its contents.

Q. Do you mean a steel barrel?

A. Iron barrel, or wooden barrel, or any kind of barrel.

Q. Do you know of any wooden barrel that would stand the heat of No. 5 tank, loaded as the "Korea Maru" was loaded, as described to you on the trial?

(Testimony of Lebeus Curtis.)

A. As I understand, some of the barrels did come out of No. 5 tank in good condition, with all their contents.

Mr. BOLAND.—That is a fact.

Mr. McKEON.—Read the question, again.

(Last question repeated by the reporter.)

A. I understand it.

Q. Do you know of any?

A. I do not know of any wooden barrel that will hold cocoanut oil that I would guarantee would hold cocoanut oil on an under-deck vessel across the Pacific.

Q. Do you know any barrel that you would guarantee that would stand a trip across the Pacific stowed in No. 5 tank, with [242] no ventilation, and being air-tight?

A. Yes, I have seen barrels of cocoanut oil come out of other vessels where the temperature of the hold was very high—it came out in good condition, with all the contents, and I believe they would come across in the “Korea Maru” No. 5 tank.

Q. Will you read that question again?

(Last question repeated by the reporter.)

A. I think I have answered that the best I can, Mr. McKeon.

Q. Then you do not think that heat has any effect on cocoanut oil in a barrel?

A. I know it will liquefy cocoanut oil in barrels.

Q. Has it any effect on the barrels, that you know of? A. On empty barrels, or full barrels?

Q. On full barrels, and if so, what is the effect?

(Testimony of Lebeus Curtis.)

A. I think it will shrink a barrel—heat will shrink a barrel.

Q. Do you think it will? A. Yes.

Q. Do you think that there would be a heat in No. 5 tank, located immediately abaft the engine-room and completely enclosed, with no ventilation, and the only opening into it being covered over with hatch boards, and seven feet of cargo?

A. Some heat, yes.

Q. Considerably more than you would find in No. 7 hold? A. Yes.

Q. You don't know what the heat of that tank would be? A. No.

Q. Captain, as I understand you, if you have good wooden containers, you can properly stow cocoanut oil in the compartment on the ship which has no ventilation, is air-tight, and gets considerable heat from the engine-room?

A. I think if the containers, the wooden barrels, are thoroughly seasoned, and are in good condition, tight, when they go on board the vessel, you can just as properly stow them in No. 5 tank as any other part of the vessel. [243]

Q. Without any air? A. Without any air.

Q. Without any ventilation?

A. I am taking into consideration all of the conditions of No. 5 tank when I say that.

Mr. McKEON.—That is all.

Mr. BOLAND.—That is all. [244]

Wednesday, April 16, 1919.

**Testimony of William F. Dunn, for Libelant.**

WILLIAM F. DUNN, called for the libelant, sworn.

Mr. McKEON.—Q. What is your full name?

A. William F. Dunn.

Q. You were in charge, for a considerable period of time, of the stevedoring of the T. K. K. ships, were you not? A. Yes.

Q. In that capacity, do you remember a shipment of cocoanut oil that came in on the “Korea Maru”?

A. I do.

Q. Do you remember a shipment of cocoanut oil that came in on the “Korea Maru” in the latter part of 1917, consigned to Willits & Patterson?

A. I do.

Q. Do you remember where that oil was stowed on the “Korea Maru”?

A. Part of it in No. 5 tank, and part in No. 7 lower hold.

Q. In what containers was that oil?

A. Wooden barrels.

Q. Did you see the barrels of cocoanut oil in that shipment that were stowed in No. 5 tank?

A. I did.

Q. When did you see that with respect to the discharge—while they were discharging it?

A. While they were discharging it.

Q. What condition was that oil in No. 5 tank in?

A. In very poor condition, the barrels leaking.



(Testimony of William F. Dunn.)

Q. Will you describe the condition of the barrels as you observed them in No. 5 tank?

A. I remember distinctly that they were leaking very badly. As a matter of fact, my attention was called to the fact that they had got into the oil and I was asked by either the fireman or one of the head assorters to go down and look at the condition of the oil as it came out of the ship.

Q. What did you notice about the barrels?

A. Particularly, that they were open and were leaking—that the oil was leaking out of them.

Q. Did you or did you not notice whether or not any of the heads [245] were off the barrels?

A. I am inclined to think that there were heads off of the barrels, that is, some of the barrels, the latter end of the discharge of the oil—I am quite sure that many of the heads were off.

Q. Did you notice whether or not any of the barrels were broken or stove in?

A. Some of the heads were out of the barrels, yes.

Q. How long were you engaged in that business for the T. K. K. line?

A. I started on the dock as the contracting stevedore of the T. K. K. Company in 1901.

Q. You were continuously with them up till when?

A. 1917.

Q. During that period of time, did you ever see a consignment of cocoonut oil come into this port in worse condition than the barrels of oil that came out of No. 5 tank?

(Testimony of William F. Dunn.)

A. Not on any of the vessels that I ever had to discharge.

Q. The testimony you have given all relates to the oil that came out of No. 5 tank? A. Yes.

Q. Did you see the oil in the same shipment that was stowed in No. 7 hold?

A. I saw oil that was stowed in No. 7, but I don't know that it was the same shipment—I would not say positively that it was of the same shipment, but I know that there was oil stowed in No. 7.

Q. What was the condition of that oil in No. 7?

A. I don't remember having seen it being discharged, but I remember standing on the steerage deck by No. 7 when they were discharging freight that had been stowed on top of the oil, and as far as I could see, those barrels were not in bad condition.

Q. Were they in apparent good order and condition?

A. They were apparently in good condition; as I remember, they were only one high on top of the lower hold, that is, the deck.

Q. One tier?

A. One tier, and there were not a great many of them; possibly I was not there when they were being discharged; as [246] a matter of fact, I do not remember having seen them discharged.

Q. Did you have a conversation with the chief engineer of the ship at that time during the discharge? A. I did.

Q. Will you relate that conversation, where it was, and who was present, if anyone?

(Testimony of William F. Dunn.)

A. I was standing just aft of the chief engineer's room, near the rail, overlooking No. 5 hatch, and during the time that this oil was being discharged some mention was made, possibly by myself or possibly by the chief engineer, I don't remember which, about the condition of the oil.

Q. In No. 5 tank?

A. As it was coming out of No. 5 tank; we were discharging it in net slings, and as it was hoisted up and then swung over on to the dock, a great deal of the oil was leaking out of the barrels, and he said that he knew that the oil was leaking in No. 5 tank because when they pumped their bilges at sea there was an extra large amount of oil being discharged, and they could see it on the water.

Mr. McKEON.—That is all.

Cross-examination.

Mr. BOLAND.—Q. Your relation with the respondent at the time you testify to was as contracting stevedore, was it not, Mr. Dunn? A. Yes.

Q. You held a contract under which you were paid a certain amount for stevedoring the vessels?

A. Exactly.

Q. That contract is now terminated, is it not?

A. Yes.

Q. Have you any litigation pending against the respondent? A. I have.

Q. In which you seek damages? A. Yes.

Q. In about what sum? A. \$150,000.

Q. Who were your foremen on the "Korea Maru" at the time you testify to?

(Testimony of William F. Dunn.)

A. The head foreman was James Gibson, and the man in charge of the after end of the ship was James Powers. [247]

Q. Was Mr. Barry employed by you at the time?

A. Barry was an employee of mine at the time, and I think that possibly he was, although I would not say for sure, in charge of the assorting at the after end of the vessel. I knew that he was what we term our second man, our second assorter, and he would likely be in charge of the after end; that I am not sure of.

Q. You said that you looked down from the deck into No. 7 hatch, and saw the barrels, and they appeared to be in good condition?      A. Yes.

Q. But you did not see them discharged?

A. No, I do not remember seeing them discharged.

Q. Did you go up alongside the barrels as they came out of No. 5 tank?      A. Yes.

Q. Some of them had the heads stove in?

A. Yes.

Q. There were various conditions of fullness?

A. Yes.

Q. Some empty, were they?      A. Some empty.

Q. Some half full?      A. Some half full.

Q. And some full?      A. Exactly.

Mr. BOLAND.—That is all.

**Testimony of Benjamin Free, for Respondent  
(Recalled).**

BENJAMIN FREE, recalled for the respondent.

Mr. BOLAND.—Q. Mr. Free, without going into a detailed explanation, will you now refresh your recollection as to the wooden partition separating the tank No. 5 from the water-tanks, and tell us whether the planking there was set so close together as to permit the passage of air from the skin of the vessel to tank 5, or not?

A. It is what they call a temporary bulkhead, put up there for stowage of cargo, to keep it from falling off this recess or the shaft alley, and this bulkhead is about 1½ inch by 8 planking, nailed on to a carlin, and the same on top; these [248] boards are just placed edge to edge.

Q. There were interstices, were there, between the planks, so that there would be—

Mr. McKEON.—That is objected to as leading.

A. Yes, there was a door.

Mr. BOLAND.—I withdraw the question.

A. (Continuing.) These planks or boards were set edge to edge, and there was no caulking, or no tongue-and-groove.

Q. In other words, would it permit the passage of air from the skin of the ship to the cargo in tank 5?

A. Yes, because there was one board left out altogether there, to get a passageway in between the tanks, so that they could go to the skin of the ship.

(Testimony of Benjamin Free.)

There was a board on an incline there running to the fore and aft stringer on the side of the ship from the shaft alley recess in between the two tanks, just room enough for you to crawl down, in between. There was just one width of the board out.

Cross-examination.

Mr. McKEON.—Q. When did you examine that bulkhead?

A. That is two weeks ago, or three weeks ago—the day the “Korea” sailed, or the day before she sailed.

Q. The day before she sailed? A. Yes.

Q. How much cargo did she have in that compartment, if any?

A. She did not have any, hardly.

Q. She had some?

A. Very little, though.

Q. You don't know what condition that bulkhead was in at the latter part of 1917?

A. No, the original bulkhead, or part of it, I would not swear to.

Q. Then your position is this was neither caulk or tongue-and-groove? A. Yes.

Q. In other words, it was planks laid on top of each other?

A. Yes, edge to edge, a temporary bulkhead, as they call it. [249]

Q. Now, the plank that you say was missing out of that bulkhead, which side was it on, the star-board side or port side?

(Testimony of Benjamin Free.)

A. On the starboard side.

Q. On the starboard side? A. Yes.

Q. Isn't that in the nature of a doorway to get into the tanks?

A. No, they just left out this plank, large enough for an individual to go through.

Q. Where is it, in the center, or in the end?

A. In the center between the two tanks, there is a tank aft and a tank forward.

Q. But it is not a plank out, it is almost a doorway? A. It is one plank out there.

Q. How wide is it? A. About ten inches.

Q. Up and down?

A. No; it is over six feet high.

Q. It is that one vertical plank that is out?

A. Yes.

Q. How do the planks in that bulkhead run, fore-and-aft, or up and down?

A. Up and down, vertical.

Q. They do? A. Yes.

Q. You are certain of that? A. Yes.

Q. You are just as positive of that as any other thing you have testified to?

A. As positive as that I have my hat in my hand.

Q. The photographs would not show you the contrary?

A. Yes, they would, because we moved the plank to get in there.

Mr. McKEON.—May I touch upon a matter he testified to the other day?

Mr. BOLAND.—Yes.

(Testimony of Benjamin Free.)

Mr. McKEON.—Q. Have you ever sailed on a ship that carried cocoanut oil? A. No.

Q. Have you ever manufactured cocoanut oil? A. No.

Q. Do you know what cocoanut oil looks like? A. Yes.

Q. Has it the same color as every other oil you have seen? [250] A. No.

Q. Entirely different, is it not?

A. Yes, it is white.

Q. It is as distinguishable from fuel oil as night is from day, is it not? A. Yes.

Q. What does the "Korea Maru" burn?

A. Coal.

Q. You still maintain, do you, that the quality of seepage from the engine-room into No. 10 bilge would be considerable? A. Yes, it would.

Q. How much, half an inch, or two inches?

A. Well, according to how long they keep the pump going; the seepage and water service mix together; that saponifies in there and that all churns up white.

TESTIMONY CLOSED.

[Endorsed]: Filed Apr. 25, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [251]



In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON, Copartners Doing Business Under the Firm Name of WILLITS and PATTERSON,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Memorandum Decision,**

Filed October 16, 1919.

(OPINION AND ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANTS AND REFERRING CAUSE TO U. S. COMMISSIONER TO ASCERTAIN AMOUNT DUE.)

McCUTCHEN, OLNEY & WILLARD, for Libelants.

SAMUEL KNIGHT and F. E. BOLAND, for Respondent.

CUSHMAN, District Judge.

On, or about the 7th day of July, 1917, libelants,

at the Port of Manila, delivered to the respondent steamer, "Korea Maru," 542 barrels of cocoanut oil for transportation to the Port of San Francisco. Three bills of lading were issued for the total shipment; 440 barrels were stowed in a compartment known as No. 5 tank and the balance 102 barrels, were stowed in No. 7 hold. During the voyage, a great quantity of the oil leaked out of the barrels. This oil found its way into the bilges, through the scuppers, and was pumped overboard. Libelants in this action seek [252] to recover the value of the oil so pumped overboard, on the ground that No. 5 tank was an improper place for the carriage of cocoanut oil. There were 245,715 pounds of cocoanut oil and there was a large loss, it being stated as over 92,000 pounds.

The answer denies that there was any negligence and sets up two affirmative defenses: First, that the bills of lading except liability for leakage of contents; second, that the containers of the cocoanut oil were insufficient.

Under the above exception in the bills of lading, respondent is not liable, unless it was guilty of negligence in stowage, or negligent in failing to save the oil after it escaped from the containers. This exception places upon libelants the burden of showing negligence in the stowage resulting in loss. An exception in the bills of lading on account of leakage has no different effect in this respect than other similar exceptions.

It will be impossible to fully consider the question of negligent stowage without considering at

the same time the affirmative defense regarding the sufficiency of the containers, as the issue becomes whether the proximate cause of the loss of the oil was negligence of respondent in stowage, or defects in the barrels. On account of the conclusion reached, it is not necessary to determine whether the oil could have been saved by the ship from the bilges, nor to determine whether, in fact, the soundings of the bilges would disclose the fact that the cargo oil was running through the scuppers.

The questions in this case are mainly questions of fact. The bills of lading under which the oil was carried do not contain any exception or notation thereon as to any bad condition of the shipment or any defect as to the containers. The barrels were of new California fir, having been shipped out knocked down to Manila and there set up just prior to the voyage in question. An examination of the barrels after their arrival in San Francisco showed [253] that they had been covered with glue on the inside, which was still hard. This is shown to have been one of the recognized methods of treating wooden barrels to fit them for carrying such oil. (The *Claverburn*, 147 Fed. 850, at 852.) The glue closes the pores of the wood and keeps out the oil.

The voyage in question was the hottest of the year. It was the hottest season of the year. The temperature of tank No. 5 was not taken on the voyage. The evidence tends to show that it was probably from 115 to 120 degrees Fahrenheit. The temperature of hold No. 7 was probably around 75

degrees. Coconut oil solidifies at 65 degrees and liquefies at 75 degrees. It has an expansion of 2/100ths of one per cent in every degree rise in temperature.

Coconut oil is a nonviscous oil. It is obvious, and the testimony is ample to show, that this would increase its fluidity when subjected to heat and facilitate its escape from its containers. The evidence also shows, and it appears to have been long recognized, that coconut oil is of a peculiarly penetrating character (The *Dunbritton*, 73 Fed. 535), which characteristic, as stated, doubtless would be intensified when subjected to heat.

In a letter from the chief officer of the "Korea Maru" to the agents of its owners, dated October 4, 1917—the chief officer being responsible for the stowage on this voyage—he says:

"\* \* \* I understand that much leakage was found after discharging the cargo at San Francisco was from the barrels which were stowed in No. 5 hold. \* \* \*

"However, as you are aware, the coconut oil will congeal itself if it meets with low temperature, and no fear of leakage, but should it become a little heated, it is very leakable even if protected by strong barrels, and I have often had the same experience. \* \* \*

"The voyage No. 4 of this vessel from Hong Kong to San Francisco as above mentioned was the hottest of the season and therefore it was only natural that the temperature in the steamer heated and I am sure this caused so

much leakage, since I have no accountable reason otherwise. \* \* \*

“I consider the above leakage due to temperature naturally heated during the voyage in the hot season, and the nature of [254] the oil. The leaked oil ran down into the Bilge well and it was every day pumped out of the steamer with the other bilge water as steamer cannot stop the pumping out of bilge water even for half a day.”

The danger of leakage being caused by heat is well understood by shipping men, as the evidence shows. As stated, it is clearly apparent that heat would increase the fluidity of the oil and, as it did so, the chances of its escape from any container would be greater; but, aside from this, there appear to be reasons for the escape of such oil from wooden containers subjected to heat, not at once apparent. So long as the result—the increased danger of leakage—is a well known fact among shipping men, it is not important to determine the scientific explanation. One of respondent’s witnesses, a chemist, testified:

“A. All barrels in a commercial condition, so to speak, that is, as they would be met with in commerce, have more or less water in the wood fibre, and water in contact with cellular material of all kinds tends to swell it; there is a *quasi*-chemical combination takes place there, so that the volume of the whole is much greater than the sum of the volumes of water and wood separately; that combination does not take

place in the case of oil, and consequently when the water of a wood is driven out by one cause or another and is replaced by oil, there will be shrinkage. In other words, the sum of the volume of the oil and the volume of wood would practically represent the volume of the two in combination.

“Q. And there is an apparent shrinkage?

A. Yes.

“Q. Does the oil, itself, tend to drive the water out? You spoke of driving the water out of the wood by one means or another. Does the oil, itself, tend to do that?

“A. Yes, there is a tendency, if the wood is not properly protected, for the oil to penetrate into the wood and for the water which may escape as a vapor at the surface to be driven out.”

This witness was, evidently, at some pains to refrain from stating—although led by counsel for respondent—that the oil, unassisted, would drive the water from the wooden containers to a dangerous extent. An explanation of the process, taken in connection with the effect of heat upon the oil—increasing its fluidity, and thereby intensifying its facility for penetration— [255] and heat also expanding it, would increase its pressure upon the inner walls of the containers and thus increase its power of penetration and thereby help it in driving the water out of the wood of the staves and heads of the barrels, resulting in this shrinkage. The outer walls of the barrels being exposed to the

heated atmosphere, if excessive, the tendency would also be to help in the evaporation of the water from the outer surfaces. Thus it might be said that excessive heat would not only help to draw the water out of the wood, but also, by reason of the oil's expansion, to, at the same time, drive it out,

While there is a dispute in the evidence, it appears with reasonable certainty that, owing to its steel deck and bulkhead, its connection, and situation with relation to the engine-room thrust recess and a hot-water tank, together with want of ventilation, closed hatches with cargo on the top of them and the considerable distance intervening between its walls and the skin of the ship, tank No. 5 was the hottest place on the ship used for the stowage of cargo. While the temperature maintained is not shown with exactness, it is clear that it was relatively the highest and, as stated, 115 to 120 degrees Fahrenheit.

The preponderance of the evidence shows that No. 5 tank was an improper place for the carriage of this oil. Although there is much evidence on this and related questions and the evidence is somewhat in conflict, I do not deem it necessary to further state it at length or to enter upon its analysis or endeavor to determine what portions of it may be reconciled, except in one particular:

Upon the argument of the cause, respondent passed by other issues and disputes and placed its defense squarely upon one proposition: that, one part of the shipment of oil having been made in tank No. 5, and one part in hold No. 7, and hold No.

7 being admittedly a proper place for its stowage, and the extent and character of the loss of oil from the containers in hold No. 7 being the same [256] as that from those in tank No. 5, that this, necessarily, established two things; the fitness of tank No. 5 as a place of stowage, and the unfitness of the containers, the barrels, as the cause of the loss.

Before determining the correctness of the conclusion reached, it will be necessary to determine the truth of the premises. The one assumed fact disputed is that oil was lost from hold No. 7 in the same manner and, relatively, to the same extent, as in tank No. 5.

While the Court would not, probably, be justified in holding the converse of the rule invoked by respondent to be entirely decisive of the case, and that, if it were shown that the heat and losses were both greater in tank No. 5 than hold No. 7, it, necessarily, followed that the excessive heat was the cause of the loss, yet, in view of much that is admitted, it would, if shown, have to be considered as a very important circumstance.

The evidence upon which respondent mainly relies to establish that the barrels of oil in hold No. 7 were, at the time of discharge, in equally as bad condition as those in tank No. 5 is that of certain longshoremen who helped, upon the dock at San Francisco, in sorting this and other cargo from the ship. They were not upon the ship; did not see any part of the cargo in question in the ship; they are still in the employ of the claimant; their attention is not shown to have been directed at the



time to the source from which the badly leaking barrels came—whether from tank No. 5 or hold No. 7, and their testimony is vague and general in character. There is little definite or exact about it.

The evidence shows that there is generally a certain amount of leakage from wooden containers of this character of oil. I conclude that these witnesses are mistaken in thinking, upon having their attention directed to the transaction long afterwards, [257] that they recall that which they are unable to remember, or they have exaggerated the normal leakage of the containers from hold No. 7. The decided weight of the evidence is contrary to their testimony.

As shown above, the chief officer stated that his understanding (gained at the time most likely from those upon the ship) was that the loss of the oil was in tank No. 5.

The stevedores called by the respondent were from the cargo sorters working on the dock; none was called who helped break up the cargo in tank No. 5 or hold No. 7, or who assisted in getting it out of either. No record kept by, or on the part of the ship as to the condition of the oil barrels upon their discharge was introduced; nor was an attempt made to negative the existence of such, or otherwise account for its absence, although it was admitted that such a record was usually kept of the condition of the cargo by the stevedoring firm in charge of the discharge of this cargo, which firm was regularly employed by the claimant, and its production was demanded by the libellant.

The captain of the respondent vessel testified that, upon arrival at San Francisco, the condition of the cargo in No. 7 hold was good and that the condition of the barrels in No 5 tank was bad. Mr. Dunn, the head stevedore of the claimant, with a suit pending against it, but evidently a fair and careful witness, testified that he was asked when "they get into the oil" to look into the condition of it as it came out of the ship and that he found the barrels from No. 5 tank were open and leaking badly, many of the heads being off. Regarding the oil in No. 7 hold, this witness said:

"Q. What was the condition of the oil in No. 7?"

"A. I don't remember having seen it being discharged, but I remember standing on the steerage deck by No.7 when they were discharging freight that had been stowed on top of the oil, and as far as I could see, those barrels were not in bad condition. [258]"

"Q. Were they in apparent good order and condition?"

"A. They were apparently in good condition; as I remember, they were only one high on top of the lower hold, that is, the deck."

There being but a single tier of these barrels in No. 7 hold, should have enabled Mr. Dunn to observe fairly well their condition.

The chief engineer of the vessel told Mr. Dunn that he knew at sea that the oil was leaking in No. 5 tank. There was no showing made that any other cargo stowed in No. 7 was damaged by oil.

'There was no notation of defects in the barrels made on the bills of lading. The bills of lading acknowledged receipt of the cargo "in apparent good order and condition." This is *prima facie* evidence of the suitability of the containers, except as to latent defects. (The Aki Maru, 255 Fed. 721, at 723). No latent defect is shown, unless the susceptibility of wooden barrels to shrinkage through the operation of this oil, particularly when heated, may be called such, and that being an effect well understood among shipping men cannot properly be so considered.

The containers, the barrels, as stated, were new; are shown to have been of material customarily used for that purpose and the interiors were glued in the usual manner. They were tight and sound, having no leakage when stowed at Manila, although their contents was then in a liquid state. The containers in No. 5 tank are not shown to have been of any different material or construction than those stowed in No. 7 hold. The implication from the testimony is that they were substantially alike. The fact that, at the end of the voyage, a portion of the barrels in No. 5 tank were still full, a part, empty, and the remainder partly empty does not establish defects originally in the containers of the two latter classes.

Doubtless, the tier of barrels on the steel floor directly above the engine-room thrust recess and those stowed next the aft steel bulkhead of the engine-room and main escapes, as well as those stowed next the hot-water tank would be subjected

to greater heat than those in other parts of the tank and, consequently, shrink and warp to a greater extent than those barrels next the steel floor of the tank. That they were damaged to a greater extent than those in the upper tiers of the barrels is fairly indicated by the [259] testimony of the chief stevedore, Mr. Dunn, who said:

“I am inclined to think that there were heads off the barrels, that is, some of the barrels at the latter end of the discharge of the oil.”

At the time of giving the foregoing testimony, he was speaking in his testimony of tank No. 5 and, naturally, the “latter end of the discharge of the oil” would be the barrels in the lower tier, that is, those upon the floor of the tank.

It being recognized that extreme heat was liable to cause the shrinkage of the barrels and consequent leakage, special care in stowing, in the particular of not exposing them to excessive heat, was necessary. (The *Aki Maru*, 255 Fed., 721 at 723, *supra*.) This is true, even where its effect would be to cause leakage, exemption from liability for which was covered by the exception in the bill of lading. (The *San Guglielmo*, 241 Fed., 969, 977.)

The combined effect of the heat upon the oil and the barrels, or, more specifically, the combined effect of the heat and the heated oil upon the moisture in the fibers of the barrels is found to be the cause of the shrinkage and consequent loss of the contents. Negligence in the stowage, exposing these barrels to excessive heat, not only contributed

to, but was the proximate cause of the loss of the oil in tank No. 5. I find that the barrels were fit and sufficient containers.

The decree will be for libelants and the cause will be referred in the usual way to ascertain the amount recoverable.

[Endorsed]: Filed Oct. 16, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [260]

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At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Thursday, the sixteenth day of October, in the year of our Lord one thousand, nine hundred and nineteen. Present: The Honorable, WM. W. MORROW, Judge.

No. 16,302.

WILLITS and PATTERSON, etc.,

vs.

S. S. "KOREA MARU," etc.

(Order Referring Cause to Commissioner to Ascertain and Report Amount Due Libelants, etc.)

A memorandum decision of the merits having this day been received from the Honorable Edward E. Cushman, before whom this cause was heard and submitted, the Court ordered that said decision be filed and made a record herein, and that this cause

be and the same is hereby referred to a United States Commissioner to ascertain and report the amount due in accordance with said decision.  
[261]

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In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY.—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON, Copartners Doing Business Under the Firm Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Interlocutory Decree.**

The above-entitled cause having come on for hearing before the Honorable EDWARD E. CUSHMAN, United States District Judge, presiding at the trial of said cause, who after a trial and due consideration has rendered his decision herein, holding and deciding that libelants above named are entitled to recover judgment for the loss of their cargo and directing that a decree be entered

in their favor in accordance with said decision, and further directing that an order be entered referring said cause to a Commissioner of this Court to ascertain and assess the damages sustained by libelants,—

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, in accordance with said decision, that Charles D. Willits and I. L. Patterson, copartners doing business under the firm name of Willits and Patterson, libelants herein, do have and recover judgment in the above-entitled cause for the damages sustained by them as in said decision awarded.

IT IS FURTHER ORDERED that said cause be referred to Francis Krull, Commissioner of this Court, to hear testimony and [262] ascertain and assess the said damage in accordance with said decision and thereafter make due report of same to this court.

Entered this 22d day of October, 1919.

WM. W. MORROW,  
Judge.

[Endorsed]: Service of the within Interlocutory Decree and receipt of a copy is hereby admitted this 17th day of October, 1919.

SAMUEL KNIGHT,  
F. ELDRED BOLAND,  
Proctors for Claimant.

Filed Oct. 22, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [263]

In the District Court of the United States for the  
Southern Division of the Northern District of  
California, First Division.

No. 16,302.

CHARLES D. WILLITS and I. L. PATTER-  
SON, Copartners, etc.,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," etc.,  
Respondent.

TOYO KISEN KAISHA,

Claimant.

**(Report of U. S. Commissioner.)**

To the Honorable, The District Court of the  
United States for the Southern Division of the  
Northern District of California, First Divi-  
sion, and the Judges thereof:

Pursuant to a decretal order made on October  
22, 1919, referring the above-entitled case to me to  
ascertain and report the amount of the damage in  
accordance with a decision of the Court therein, I  
have to report that I was attended by the proctors  
for the respective parties and the testimony here-  
unto attached and made a part hereof was taken as  
therein stated.

It is contended by respondent that libelants must  
show that the actual loss herein was from hold or  
tank No. 5, as distinguished from a combined loss  
from hold No. 5 and hold No. 7. The Court ap-



pears to have found in its opinion, and the decision of the case is based upon the fact, that the loss for which damage is claimed was from hold No. 5, and that the loss from hold No. 7, was only the normal leakage.

From the evidence adduced before me I do find and report as follows:

1. That 245,717 pounds of cocoanut oil was delivered for shipment by libelants at the port of loading.
2. That only 143,664 pounds of said oil was delivered in San Francisco, California, the port of discharge.
3. That the shortage was the difference between finding No. 1 and finding No. 2, or 102,053 pounds of cocoanut oil.
4. That what is termed normal leakage is one per cent of the volume of oil in barrels. [264]
5. That the normal leakage on this entire cargo was 2,457 pounds.
6. That the normal delivery should have been the difference between finding No. 1 and finding No. 5, or 243,260 pounds of cocoanut oil.
7. That the loss occasioned for which damage is found, is the difference between finding No. 6 and finding No. 2, or 99,596 pounds of cocoanut oil.
8. That the market value of cocoanut oil at the port of discharge at the date of delivery of the cocoanut oil, was \$13.25 per hundred pounds or  $13\frac{1}{4}\text{¢}$  per pound.

9. That the damage was 99,596 pounds of coconut oil at  $13\frac{1}{4}\text{¢}$  per pound or \$13,196.47.
10. That respondent turned over to libelants the sum of \$1,140.73, the amount realized from sweepings of cocoanut oil from the vessel carrying same.

I do therefore find and report that there is due libelants herein for the damage occasioned for which respondent has been held liable the sum of \$12,055.74, together with interest at the rate of seven per cent per annum from August 10, 1917, the date when delivery should have been made of the cargo of cocoanut oil.

All of which is respectfully submitted.

FRANCIS KRULL, (Seal)

United States Commissioner for the Northern District of California, at San Francisco.

Dated, September 2, 1920. [265]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY.—No. 16,302.

Before FRANCIS KRULL, Esq., United States Commissioner, on Reference to Ascertain and Report Amount of Damage.

July 29th, 1920.

CHARLES D. WILLITS and I. L. PATTERSON, Copartners, etc.,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," etc.,  
Respondent.

TOYO KISEN KAISHA,

Claimant.

(Testimony Taken on Reference to U. S. Commissioner to Ascertain Amount Due.)

APPEARANCES:

JOSEPH B. McKEON, Esq., for Libelants.

F. E. BOLAND, Esq., for Claimant.

Mr. McKEON.—This case is referred for proof of damages and is a case tried by Judge Cushman and a written opinion is on file.

The COMMISSIONER.—I have read the opinion.

(Testimony of W. E. Boyer.)

Mr. McKEON.—The libel alleges the shipment of 245,717 pounds of cocoanut oil. There was a shortage of cocoanut oil found upon the ship's arrival in San Francisco when the cocoanut oil was weighed by the public weighers of the State of California. Their certificates of weights were introduced on the trial of case and are marked Libelant's Exhibit 9, 10, and 11. These three certificates show that there was 143,664 pounds discharged by the ship in San Francisco. Deducting 143,664 pounds from the total amount delivered to the ship leaves a shortage of 102,053 pounds. There is no dispute on those figures.

Mr. BOLAND.—No. [266]

Mr. McKEON.—These three exhibits having been introduced in the case before the Court, I assume they are a part of the record now and we can just refer to them as if they were before your Honor in this hearing. So that we have on the face of the record a shortage of 102,053 pounds.

**Testimony of W. E. Boyer, for Libelant.**

W. E. BOYER, called for the libelant, sworn.

Mr. McKEON.—Q. Mr. Boyer, what is your business?

A. Salesman for Willits and Patterson.

Q. Were you a salesman for Willits and Patterson in August and September of 1917?

A. I was.

Q. Were you in charge of the oil department of that Company. A. I was.

Q. Were you at that time, in charge of that de-

(Testimony of W. E. Boyer.)

partment, familiar with the market value of coconut oil in San Francisco? A. I was.

Q. What was the market value of the cocoanut oil of the kind that arrived on the "Korea Maru" in August and September, 1917?

Mr. BOLAND.—I object to the value in San Francisco as immaterial and irrelevant.

The WITNESS.—Thirteen and a quarter.

Mr. McKEON.—Q. Thirteen and a quarter per hundred pounds?

A. Yes.

Cross-examination.

Mr. BOLAND.—Q. Does that value which you have just given include freight?

A. Yes, sir, that is the market value here.

Q. Including freight, insurance and everything from the Orient? A. Yes, sir.

Q. That was on the dock or after moved into tanks?

A. That was on the dock, that is in barrels.

Q. In barrels on the dock?

A. It came in barrels.

Q. But transported to the warehouse?

A. Just on the dock. [267]

Q. Do you know what the value of the oil would be at the same time in the Orient at the point where shipment was made?

Mr. McKEON.—That is objected to as incompetent, irrelevant and immaterial and not within the issues of the case.

(Testimony of W. E. Boyer.)

The COMMISSIONER.—He is just testing his knowledge of the oil market.

The WITNESS.—A. Well, it would be a price less the freight.

Mr. BOLAND.—Q. Doesn't the oil acquire additional value besides the stated value here less freight, by reason of shipment from the Orient here? .

A. You mean that it advances on it's way here?

Q. Yes. Isn't that the fact that oil here ready for delivery is worth more than the same oil would be worth in the Orient at point of shipment less freight? A. No, I don't think so.

Q. Wouldn't the mere fact that you had space on the vessel give the oil additional value.

A. You mean here?

Q. Yes. A. No, I don't think so.

Q. At this time there was a shortage of shipping space on trans-Pacific vessels from the Orient to San Francisco?

A. I don't remember, I don't think there was. That was barrels, I don't think there was a shortage.

Mr. BOLAND.—That is all.

Mr. McKEON.—That is all.

Mr. BOLAND.—By arrangement we will offer in evidence the testimony of the witnesses taken on the original hearing subject to Mr McKeon's objection as to its materiality. We offer the testimony by witnesses for the libelants of John H. Rinder, F. C. Gaster and James G. Rudden, and the wit-

(Testimony of W. E. Boyer.)

nesses for the claimant George E. Chapin, James McCarthy, James Gibson and Wm. J. Barry, also Cecil Brown for the libelant. (Remark addressed to Mr. McKeon.) [268] And the amount of the oil, I think you told me, was 440 barels in No. 5.

Mr. McKEON.—There were 102 in No. 7, and the barrels were in No. 5.

Mr. BOLAND.—And 440 I think in 5.

Mr. McKEON.—Q. Mr. Boyer the bill that you rendered to the T. K. & K. line for shortage was based on 12.25 per hundred pounds, can you account for the difference between that statement and the market value of the oil in San Francisco?

A. That is the selling or invoice price. The market value is \$13.25.

Q. The market value here? A. Yes.

Q. That was the selling or invoice price?

A. Yes.

Q. This 12.25 is what?

A. It is C. I. F. here. This was a bill from the shippers C. I. F. here.

Q. At 12.25?

A. Yes. The market value is \$13.25.

Q. The market value is \$1.00 a hundred pounds more than the invoice price? A. Yes, sir.

Q. In other words, that would be your profit on the transaction? A. Yes.

Mr. BOLAND.—That is what I wanted.

Mr. McKEON.—There was a credit of \$1,140.73 from the sweepings of oil turned over months after which they said was our oil, and we gave them a

credit of \$1,140.73, so that should be deducted from whatever finding you may make.

The COMMISSIONER.—That was salvage.

Mr. McKEON.—Yes, as to the oil.

Mr. McKEON.—Now, with reference to the offer of the testimony of those witnesses which is already in the case. All witnesses testified in court and their testimony was considered by Judge Cushman. In his opinion Judge Cushman made a finding of [269] fact upon that conflicting testimony. As I gather from Mr. Boland's offer it is to show that there was a leakage of oil in No. 7.

Mr. BOLAND.—Yes. This oil was in hold 5 and 7 and it was contended by libelants that the stowage in hold 5 was negligent stowage by reason of the proximity to the engine-room. We contend, and the evidence shows nothing to the contrary, that hold 7 was in good stowage condition and not negligent stowage; that if we are liable under this decision or interlocutory decree we are liable only for loss by reason of negligent stowage in hold 5 and that the libelant must, in order to establish a claim for damages, show what the actual loss was from hold 5 as distinguished from the combined loss from hold 5 and 7.

Mr. McKEON.—I am not finished. In answer to that we said the Court has found as a fact that the leakage shown on the weighers' certificates was from No. 5 because the Court holds against the claimant on the testimony introduced to show leakage in No. 7 and finds expressly that claimant's



witnesses are mistaken in saying there was leakage in No. 7. On page 7 of the opinion the Court expressly holds "they have exaggerated the normal leakage of the containers from hold No. 7. The decided weight of the evidence is contrary to their testimony." So that under the Court's ruling you cannot say there was nothing but the normal leakage in No. 7. It could not be more express on that point.

The COMMISSIONER.—Is there such a standard as normal leakage?

Mr. McKEON.—The testimony of the ship shows on that point that there was a normal leakage of one-half of one per cent to one per cent.

The COMMISSIONER.—Has that been deducted?

Mr. McKEON.—No. The Court corrects that in the testimony, that we have 102 barrels in No. 7. [270]

Mr. McKEON.—Q. Mr. Boyer, what was the average weight of pounds in a barrel of this coconut oil? A. 375 pounds net.

Mr. McKEON.—There were 102 barrels in No. 7 and the testimony shows an average weight of 375 pounds net each, giving us 38,250 pounds of oil in No. 7. Now deduct the normal leakage from 38,250 pounds of one-half of one per cent to one per cent, taking, for instance, the highest normal leakage of one per cent away as I figure it you have to deduct \$59.00, approximately 30, from the normal leakage which the Court said occurred in No. 7. Under the

Court's findings of fact and the whole opinion we think that the question of leakage in No. 7 is a closed issue in the case, the ship has had its day in court, particularly inasmuch as the Court has found against them. I think that is all. Oh, yes; I want to show the date the ship came in.

Mr. BOLAND.—Yes. The ship came in on August 1st, 1917.

Mr. McKEON.—It would be a little later than August 1st, take August 10th, we will stipulate that will be the day.

Mr. McKEON.—I ask in addition an allowance of interest at the rate of 7 per cent per annum from August 10th, 1917, that being the stipulated date of the arrival of the vessel.

Mr. BOLAND.—Do you desire any further enlightenment on the subject as to the testimony I refer to?

The COMMISSIONER.—It is a question of fact, I think I get your point in a way, but if you desire to submit a little statement referring to it, I will be glad to have it.

Mr. McKEON.—You are going on your vacation, Mr. Boland, and it should be put in before you go. I can put mine in right away.

Mr. BOLAND.—I will put mine in before I go away.

The COMMISSIONER.—The matter stands submitted with the understanding that you will file statements before Tuesday, Mr. Boland, [271] and Mr. McKeon will reply to that and that will close the matter.

Mr. BOLAND.—All right.

Mr. McKEON.—I can put mine about the same day.

[Endorsed]: Filed Sep. 3, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [272]

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In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, etc.,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," etc.,  
Respondent.

TOYO KISEN KAISHA,

Claimant.

**Claimant's Exceptions (to Commissioner's Report).**

Claimant hereby excepts to the report of the Commissioner herein, dated 2d September, 1920, on the following grounds, to wit:

1. Because the Commissioner found that there was no more than normal leakage from the coconut oil in hold 7.

2. Because the Commissioner found that the Court, in its Interlocutory Decree, had already determined that there was no more than normal leakage from the coconut oil in hold 7.

3. Because the Commissioner found that the normal leakage on the entire cargo was 2,457 pounds.

4. Because the Commissioner found that the loss occasioned, for which damage is found, is 99,596 pounds of cocoanut oil.

5. Because the Commissioner found that the damage to libelants was at the rate of \$13.25 per hundred pounds, or 13 $\frac{1}{4}$ ¢ per pound. [273]

6. Because the Commissioner found that libelants should recover interest at the rate of 7% per annum from 10th August, 1917.

SAMUEL KNIGHT and  
F. ELDRED BOLAND,

Proctors for Claimant.

Receipt of a copy of the within claimant's exceptions is hereby admitted this 10th day of Sept., 1920.

McCUTCHEON, WILLARD, MANNON &  
GREENE,

K.,

Proctors for Libelants.

[Endorsed]: Filed Sep. 11, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [274]

In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, etc.,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," etc.,  
Respondent.

TOYO KISEN KAISHA,

Claimant.

**(Order Overruling Exceptions to Commissioner's  
Report, etc.)**

McCUTCHEN, WILLARD, MANNON & GREENE,  
Proctors for Libelants.

SAMUEL KNIGHT, Esq., and F. E. BOLAND,  
Esq., Proctors for Respondents.

Claimant's exceptions to the report of the Com-  
missioner herein are overruled, and a decree will be  
entered for libelants for the sum of \$12,055.74, with  
interest thereon at 7 per cent per annum from  
August 10th, 1917.

Let such decree be presented.

October 20th, 1920.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Oct. 20, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [275]

In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Final Decree.**

The above-entitled cause having come on regularly for trial, libelant appearing by Messrs. McCutchen, Willard, Mannon & Greene and Joseph B. McKeon, their proctors, and claimant and respondent appearing by Samuel Knight and F. E. Boland, its proctors, and it appearing that the Honorable Edward F. Cushman, the judge before whom the above-entitled action was tried, has filed his opinion herein, holding and deciding among other things that claimant and respondent is liable to libelants for the damages sustained by them because of the matters and things set forth in the libel and amendment thereto on file herein.

And it further appearing that an interlocutory decree was duly and regularly made and entered herein referring said cause to Francis Krull, United States Commissioner herein, to ascertain and report the amount of damages suffered by said libelants; and it appearing that said Francis Krull, commissioner, has ascertained [276] and reported the said damage as amounting to the sum of twelve thousand and fifty-five and  $74/100$  (12,055.74) dollars, together with interest thereon at the rate of seven (7) per cent per annum from the 10th day of August, 1917, until paid; and it further appearing that exceptions to said report have been filed by said claimant and respondent, and said exceptions to said report having been heard and overruled, and the said report being hereby confirmed in all respects.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Charles D. Willits and I. L. Patterson, copartners doing business under the firm name of Willits and Patterson, libelants herein, do have and recover from the Japanese Steamship "Korea Maru," her engines, boilers, boats, tackle, apparel and furniture, and claimant herein, Toyo Kisen Kaisha, the sum of twelve thousand and fifty-five and  $74/100$  (12,055.74) dollars, together with interest thereon at the rate of seven per cent per annum from the 10th day of August, 1917, to the 26th day of October, 1920, amounting to the sum of two thousand, six hundred ninety-three and  $45/100$  (2,693.45) dollars, or a total sum of fourteen thousand, seven hundred

and forty-nine and 19/100 (14,749.19) dollars, together with interest on said total sum of fourteen thousand, seven hundred and forty-nine and 19/100 (14,749.19) dollars at the rate of seven per cent per annum from the said 26th day of October, 1920, until paid; together with their costs to be hereafter taxed, with interest on said costs so taxed.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that unless an appeal be taken from this decree within the time limited by the rules and practice of this court the stipulators for costs and value on the part of the claimant of said Japanese steamship "Korea Maru" shall cause the engagements of their stipulations to be performed, or show cause within four days after the expiration of the aforesaid [277] time within which to appeal, why execution should not issue against their goods, chattels and lands for the amounts set forth in this decree.

Done in open court this 27th day of October, 1920.

M. T. DOOLING,  
District Judge.

[Endorsed]: Service of the within final decree and receipt of a copy is hereby admitted this 21st day of October, 1920.

SAMUEL KNIGHT and  
F. ELDRED BOLAND,  
By J. E. MANDERS,  
Proctors for Claimant.

Filed Oct. 27, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [278]



In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Notice of Appeal.**

To Libelants Above Named and to Messrs. McCutchen, Willard, Mannon & Greene, Their Proctors, and to the Clerk of the Southern Division of the United States District Court, for the Northern District of California:

You, and each of you, will please take notice that the respondent herein, the Japanese steamship "Korea Maru," her claimant, Toyo Kisen Kaisha, and United States Fidelity & Guaranty Company, her stipulator, appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the final decree of the Southern Division of the United States District Court, for the Northern District of

California, made and entered in said cause on the 27th day of October, 1920.

Dated San Francisco, California, November 29th, 1920.

SAMUEL KNIGHT and  
F. ELDRED BOLAND,

Proctors for Respondent, Claimant and United  
States Fidelity & Guaranty Company.

[Endorsed]: Due service and receipt of a copy of the within Notice of Appeal is hereby admitted this 29th day of November, 1920.

McCUTCHEN, WILLARD, MANNON &  
GREENE,

Proctors for Libelants. [279]

Filed Nov. 29, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [280]

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In the Southern Division of the United States  
District Court for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

### **Assignment of Errors.**

#### I.

The District Court erred in finding and holding that respondent and claimant are liable to libelant in the sum of \$12,055.74, or any sum.

#### II.

The District Court erred in finding and holding that respondent and claimant are liable to libelant in the sum of \$2,693.45 interest.

#### III.

The District Court erred in finding and holding that respondent and claimant are liable to libelant for interest upon the sum of \$14,749.19 from 26th October, 1920, at the rate of 7%.

#### IV.

The District Court erred in finding and holding that stowage of cocoanut oil in hold five of respondent vessel was negligent.

#### V.

The District Court erred in finding and holding that the containers of said cocoanut oil were not insufficient. [281]

#### VI.

The District Court erred in finding and holding that there was not an equivalent leakage of cocoanut oil stowed in hold seven.

#### VII.

The District Court erred in finding and holding that libelant had established any measure of damage whatever, in that libelant did not establish the respective leakage from holds five and seven.

## VIII.

The District Court erred in finding and holding that the leakage of cocoanut oil was caused by heat, and not by the insufficiency of the containers of said oil.

## IX.

The District Court erred in finding and holding that respondent and claimant are liable to libellant, notwithstanding the exception contained in the bills of lading excepting liability for leakage of contents.

## X.

The District Court erred in finding and holding that the fact that at the end of the voyage a portion of the barrels in hold number 5 were still full, a part empty and the remainder partly empty does not establish defects in the containers of the latter two classes.

## XI.

The District Court erred in permitting the libel to be amended.

## XII.

The District Court erred in overruling the claimant's and respondent's exceptions to the commissioner's report, fixing the amount of libellant's damages.

SAMUEL KNIGHT and  
F. ELDRED BOLAND,

Proctors for Claimant and Respondent. [282]

[Endorsed]: Due service and receipt of a copy of the within assignment of errors is hereby ad-

mitted this 29th day of Nov., 1920.

McCUTCHEEN, WILLARD, MANNON &  
GREENE,

Proctors for Libelant.

Filed Nov. 29, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [283]

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In the Southern Division of the United States Dis-  
trict Court, for the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Bond Staying Execution on Appeal.**

KNOW ALL MEN BY THESE PRESENTS,  
that American Indemnity Company, a corporation,  
duly organized and existing under and by virtue of  
the laws of the State of Texas, and licensed to do a  
general surety business in the State of California,  
as surety, is held and firmly bound unto the li-

belants in the above-entitled cause in the sum of Twenty Thousand Dollars (\$20,000), to be paid to the said obligees, to which payment well and truly to be made we do hereby bind ourselves firmly by these presents.

Signed, sealed and dated at San Francisco, California, this 29th day of November, 1920.

WHEREAS, Toyo Kisen Kaisha, claimant of the Japanese steamship "Korea Maru," the Japanese steamship "Korea Maru," respondent, and United States Fidelity & Guaranty Company, a corporation, her stipulator, have appealed to the United States Circuit Court of [284] Appeals, for the Ninth Circuit, from a Decree of the United States District Court, for the Southern Division of the Northern District of California, bearing date the 27th day of October, 1920, in a suit in which Charles D. Willits and I. L. Patterson, copartners, doing business under the firm name of Willits and Patterson, are libelants, and the Japanese steamship "Korea Maru," her engines, boilers, boats, tackle, apparel and furniture, is respondent, and Toyo Kisen Kaisha, is claimant, which Decree orders the said Japanese steamship "Korea Maru," respondent, Toyo Kisen Kaisha, her claimant, and United States Fidelity & Guaranty Company, her stipulator, to pay Charles D. Willits and I. L. Patterson, copartners, doing business under the firm name of Willits and Patterson, said libelants, the sum of Twelve Thousand Fifty-five and 74/100 Dollars (\$12,055.74), together with interest thereon at the rate of seven (7) per cent per annum from the 10th day of

August, 1917, to the 26th day of October, 1920, amounting to the sum of Two Thousand Six Hundred Ninety-three and 45/100 Dollars (\$2,693.45), or a total sum of Fourteen Thousand Seven Hundred and Forty-nine and 19/100 Dollars (\$14,749.19), at the rate of seven (7) per cent per annum from said 26th day of October, 1920, until paid, together with their costs and interest on said costs; and,

WHEREAS, the Japanese steamship "Korea Maru," Toyo Kisen Kaisha, her claimant, and United States Fidelity & Guaranty Company, her stipulator, desire, during the process of such appeal, to stay the execution of the said Decree of the District Court:

NOW, THEREFORE, the condition of this obligation is such that whereas, if the above-named appellants, the Japanese steamship "Korea Maru," Toyo Kisen Kaisha, her claimant, and United States Fidelity & Guaranty Company, her stipulator, shall prosecute said appeal with effect and pay all costs which may be awarded against them, as such appellants, if the appeal is not sustained, and shall [285] abide by and perform whatever decree may be entered by the United States Circuit Court of Appeals, for the Ninth Circuit, in this cause had and the mandate of said Court by the Court below, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

AMERICAN INDEMNITY COMPANY.

By THEODORE P. STRONG, (Seal)

Attorney in Fact.

Approved: November 29th, 1920.

M. T. DOOLING,  
United States District Judge.

[Endorsed]: Due service and receipt of a copy of the within bond is hereby admitted this 29th day of Novr., 1920.

McCUTCHEEN, WILLARD, MANNON &  
GREENE,  
Proctor for Libelant.

Filed Nov. 29, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [286]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libelants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.



**Bond for Costs on Appeal.**

KNOW ALL MEN BY THESE PRESENTS: That American Indemnity Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Texas, and licensed to do a general surety business in the State of California, as surety, is held and firmly bound unto the libelants in the above-entitled cause in the sum of Two Hundred and Fifty Dollars (\$250), to be paid to the said obligees, to which payment well and truly to be made it hereby binds itself firmly by these presents.

Signed, sealed and dated at San Francisco, California, this 29th day of November, 1920.

The condition of this obligation is such that, whereas, lately in the Southern Division of the United States District Court, for the Northern District of California, First Division, in Admiralty, [287] in the above-entitled cause, a decree was entered against the above-named respondent, claimant and United States Fidelity & Guaranty Company, stipulator, from which decree said respondent, claimant and stipulator have appealed to the United States Circuit Court of Appeals, for the Ninth Circuit:

NOW, THEREFORE, if said claimant, respondent and her stipulator, as appellants, shall prosecute their appeal to effect, and shall pay all costs on appeal, if said appeal is not sustained, then this obligation shall be void, otherwise to be and remain in full force and effect and execution to issue thereon for the amount of such costs, not exceeding Two

Hundred and Fifty Dollars (\$250), at the instance of any persons interested as aforesaid.

AMERICAN INDEMNITY COMPANY.

By THEODORE P. STRONG, (Seal)

Attorney in Fact.

[Endorsed]: Due service and receipt of a copy of the within Bond for Costs is hereby admitted this 29th day of Novr., 1920.

McCUTCHEN, WILLARD, MANNON &  
GREENE,

Proctors for Libellant.

Filed Nov. 29, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [288]

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In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, Doing Business Under the Firm  
Name of WILLITS and PATTERSON,  
Libellants,

vs.

The Japanese Steamship "KOREA MARU," Her  
Engines, Boilers, Boats, Tackle, Apparel and  
Furniture,

Respondent.

TOYO KISEN KAISHA,

Claimant.

**Notice of Filing Bond for Costs on Appeal and Also  
Bond Staying Execution on Appeal.**

To Libelants Above Named and to Messrs. McCutchen, Willard, Mannon & Greene, Their Proctors:

You and each of you will please take notice that claimant and respondent above named did on the 29th day of November, 1920, file in the clerk's office of the above-entitled court their bond for costs on appeal and also their bond staying execution on appeal with the American Indemnity Company, a corporation, as surety.

November 29, 1920.

Yours, etc.,

SAMUEL KNIGHT and

F. ELDRED BOLAND,

Proctors for Claimant and Respondent.

[Endorsed]: Due service and receipt of a copy of the within notice, etc., is hereby admitted this 29th day of Novr., 1920.

McCUTCHEM, WILLARD, MANNON &  
GREENE,

Proctors for Libelants. [289]

Filed Nov. 29, 1920. W. B. Maling, Clerk. By  
C. W. Calbreath, Deputy Clerk. [290]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,302.

CHARLES D. WILLITS and I. L. PATTERSON,  
Copartners, etc.,

Libelants,

vs.

The Japanese Steamship "KOREA MARU," etc.,  
Respondent.

TOYO KISEN KAISHA,

Claimant.

**Stipulation (and Order Transmitting Original Exhibits With Apostles on Appeal).**

IT IS HEREBY STIPULATED, by and between the proctors for the respective parties hereto, that the original exhibits heretofore introduced in the above-entitled case may be transmitted to the Circuit Court of Appeals as original exhibits.

Dated December 17, 1920.

McCUTCHEEN, WILLARD, MANNON &  
GREENE,

Proctors for Libelants.

SAMUEL KNIGHT and  
F. ELDRED BOLAND,

Proctors for Claimant.

It is so ordered.

M. T. DOOLING,

United States District Judge.

[Endorsed]: Filed Dec. 18, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [291]

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**Certificate of Clerk U. S. District Court to Apostles  
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 291 pages, numbered from 1 to 291, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Charles D. Willits and I. L. Patterson, Copartners, Doing Business Under the Firm Name of Willits & Patterson, Libelants, vs. The Japanese Steamship "Korea Maru," Her Engines, Boilers, etc., Respondent, No. 16,302, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for apostles on appeal (copy of which is embodied herein) and the instructions of the proctors for appellants herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of One Hundred Four Dollars and Five Cents (\$104.05), and that the same has been paid to me by the proctors for libelants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 20th day of December, A. D. 1920.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [292]

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[Endorsed]: No. 3610. United States Circuit Court of Appeals for the Ninth Circuit. Toyo Kisen Kaisha, a Corporation, as Claimant of the Japanese Steamship "Korea Maru," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture, and United States Fidelity & Guaranty Company, Her Stipulator, Appellants, vs. Charles D. Willits and I. L. Patterson, Copartners Doing Business Under the Firm Name of Willits and Patterson, Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed December 20, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.